

hundreds of people working under immeasurable influences. It is not even an objective description of the way legislators think. But it is a standard for our institutions to try to meet. The reasonable legislator deserves to be canonized not for what he or she means to the legislature, but for what he or she means to the courts. The canon provides a means of interpretation that leads to sound judicial reasoning and prevents obviously harmful results. Ultimately, the democratic, legislative, and judicial processes are all supposed to arrive at the same end: a just law that meets the needs of the people. Pursuing the goals of a reasonable legislator places the judiciary in its proper position as an interpreter of the law tasked with upholding the social order.

Applicant Details

First Name	Abrar		
Last Name	Omeish		
Citizenship Status	U. S. Citizen		
Email Address	aeo36@georgetown.edu		
Address	<table> <tr> <th>Address</th> </tr> <tr> <td> Street 3133 Barkley Drive City Fairfax State/Territory Virginia Zip 22031 Country United States </td> </tr> </table>	Address	Street 3133 Barkley Drive City Fairfax State/Territory Virginia Zip 22031 Country United States
Address			
Street 3133 Barkley Drive City Fairfax State/Territory Virginia Zip 22031 Country United States			
Contact Phone Number	7035877104		

Applicant Education

BA/BS From	Yale University
Date of BA/BS	May 2017
JD/LLB From	Georgetown University Law Center
	https://www.nalplawschools.org/employer_profile?FormID=961
Date of JD/LLB	May 20, 2023
Class Rank	School does not rank
Does the law school have a Law Review/Journal?	Yes
Law Review/Journal	No
Moot Court Experience	Yes
Moot Court Name(s)	

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	Yes
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Specialized Work Experience **Appellate, Immigration, Pro Se**

Professional Organization

Organizations	Just The Beginning Foundation
	The Appellate Project

Recommenders

Treanor, William
wtreanor@law.georgetown.edu
Berger, Eric
Eric.Berger@law.georgetown.edu
9176796706
Gornstein, Irv
ilg@law.georgetown.edu

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Dear Honorable Judge and Reviewing Clerks,

I am writing to express interest in working as your clerk in the next term. I imagine you receive many applications for this role. I am writing with a specific interest in working for your honor, as I am moved by the strength and significance of your opinions. I am currently a clerk for the Supreme Court Institute at Georgetown and want to bring everything I have to support you and your efforts towards justice.

I am a third-generation Northern Virginian and a second-generation product of its public schools. I have a deep loyalty to the DMV community and hope to serve the neighborhoods that shaped me. I have been serving our area in many ways—from supporting local scout troops, to building a free tutoring and mentorship organization for thousands of underprivileged youth, to holding elected office in the nation’s toughest years to be a School Board member. I am now eager to spend the next few decades serving in our legal institutions. As I add value to your team, I hope this clerkship starts my journey to contribute and gain understanding of the law and justice system.

In addition to understanding this area and its demands as a native, I am familiar with local federal courts here as well. I have worked with a civil rights organization to bring a case of my very own through the EDVA court’s “rocket docket” from start to finish, and I have spoken with several clerks from across the region. This has enabled me to appreciate the citizen experience of federal courts and the varied approaches to cases coming through them. It has also allowed me to understand the demands of clerks in diversely-paced settings. This Spring, I will be externing at the AUSA’s office in EDVA. This will equip me with insights from yet another angle to bring unique value to your honor’s work. What’s more—I will most likely be clerking for a Northern Virginia Justice of the Virginia Supreme Court this upcoming year. I am certain these three experiences, in addition to my past work with judges in Virginia and DC, prepare me thoroughly to do a great job for you.

I have partaken in several senior level appellate courses to develop my reasoning and writing skills. In addition to those listed in my transcript, I am currently registered for the Appellate Immersion Clinic and several Supreme Court seminars that I plan to take next semester. Moreover, my public role over the past three years has required me to make hundreds of high-stakes legal decisions under sustained pressure and with little time, several of which reached the United States Supreme Court. I understand the stakes of the work you do and the importance of even the slightest mistake—from a lazy argument to a misplaced citation or typo. I take seriously the need for attention to detail, diligence, advance planning, and hard work. This approach did not start today—it comports with my track record as one among very few to successfully complete the intensive major track with a nearly -4.0 GPA in recent Yale University history, and a 4.0 unweighted GPA prior to that. This is also consistent with the reasons I am a Blume Public Interest Fellow at the Law Center, an honor given to only six students amidst 9,000 applicants.

As you can see from my writing sample, I have already written bench memos, draft opinions, and research reports for judges I have supported. I have also advised them on critical decisions involving novel legal questions, and prepared docket charts and timelines to support their day-to-day functions. For one judge, I even took it upon myself to prepare case summaries for his CLE seminar. I have had the privilege of refining my legal intuition through tutelage at varying levels, including Judge Cornelia Pillard of the US Court of Appeals for the DC Circuit, Judge Zia Faruqui of the US District Court of DC, Justice Donald Lemons of the Virginia Supreme Court, and Judge Daniel Ortiz of the Virginia Court of Appeals. These judges have taught me the importance of objectivity in legal thinking, and the power of intellectual expansion and flexibility to examine issues from all perspectives while respecting the long-standing tradition and its underlying values. I am eager to bring these skills and instincts to support you from the first day, and I am eager to proactively plan for goals that advance your honor’s legal vision.

I am specific about judges for whom I seek to work, and I write out of my belief in your approach, and admiration for some of the decisions you have made. I have much more to offer than this page will allow, and I look forward to sharing more with you. I hope you will see the combination of my loyalty, passion, attention to detail, hard work, and overall devotion as a great fit.

Thank you for your consideration. I sincerely look forward to connecting with you.

Very Respectfully,

Abrar Omeish

703-587-7104 (c)
703-865-6797 (h)

Abrar Omeish
<http://www.linkedin.com/pub/abrar-omeish/47/611/2b5>
aao36@georgetown.edu

3133 Barkley Drive
Fairfax, VA 22031

Education

Georgetown University, Washington, DC

- Juris Doctor and Master of Public Policy (dual JD/MPP), expected May 2023; student of Judge Cornelia Pillard, Irv Gornstein, Brian Wolfman.
- Blume Public Interest Fellow- full merit scholarship awarded to six students per class through a rigorous process from over 9,000 applicants

Yale University, New Haven, CT (August 2013 - May 2017)

- Double Bachelor's with Distinction: Political Science (Intensive Major Track- first in recent history to complete); Modern Middle East Studies
- Nakanishi Leadership Prize nominee; Yale MacMillan Center Research Assistant; Yale Center for Language Study Teaching Fellow
- Additional studies in Istanbul Zaim University, Ibn Haldun University, University of Jordan, Granada Summer School Oxford/Berkeley partnership

James W. Robinson Secondary School, Fairfax, VA (September 2009 - May 2013)

- International Baccalaureate Diploma, over 40 IB points, extended essay in politics; Advanced Diploma and top class rank, 4.0/4.0 unweighted GPA

Employment

Supreme Court Institute, Georgetown University, Washington, DC

Court Clerk, January 2023 – present

- Prepare bench memos, case presentations, pre-moot case conferences, oral argument notes, and post-mortem memos; assist moot court justices.

Fairfax County School Board, (www.abraromeish.com), Fairfax, Virginia

Member At-Large, January 2020 – present

- Manage a three billion dollar budget; represent 1.2 million constituents in nine districts who speak over 200 languages; oversee senior staff
- Equal access/opportunity champion; decisionmaker on complex and diverse legal issues, including two in the Supreme Court
- Successfully returned 180,000+ kids to school safely; navigated pandemic; board liaison to the County Planning Commission and the City of Fairfax
- Received over 161,000 votes countywide as the nation's first Libyan elected and Virginia's youngest and first Muslim woman in office

United States Department of Education, Office of the General Council (OGC), Washington, DC

Summer Legal Intern, May 2022 – August 2022

- Developed case briefs on new Supreme Court decisions and supported work for annual Department overview presentation event
- Provided internal audit and draft revisions of federal prayer guidance for schools and updated guidance per new Supreme Court decisions
- Prepared legal memo on possible arguments in future decision appeals to administrative law judge on university grant compliance
- Identified potential statutory interpretations and organized legal research to advance educational and vocational programming for Native Americans

Virginia Court of Appeals, Office of the Honorable Judge Daniel E. Ortiz, Fairfax, Virginia

Summer Legal Intern, May 2022 – August 2022

- Conducted legal research on various felony charges, accompanying assignments of error, and standards of review
- Prepared appellate bench memo for Judge on recommended decision with legal arguments and proposed interrogatories for both parties
- Verified and revised opinion citations; produced summaries of about ten Virginia Supreme Court case decisions for the Judge's state CLE seminar

Federal Legislation Clinic, Georgetown Law Center, Washington, DC

Student Attorney, January 2022 – May 2022

- Supported congressional advocacy group to meet client goals; developed expertise on portions of the National Defense Authorization Act
- Engaged in research and legislative drafting for federal right of action legislation (*Bivens* bill); contributed to its Congressional strategy
- Developed a policy memo consolidating 1,000+ pages of primary sources and research on Department of Defense reorganization proposals
- Authored a background memo on government use of Controlled Unclassified Information (CUI) for staff and congressional use
- Prepared staff for briefings and filled in when necessary; published one-pager documents to support advocacy goals ([example](#))

United States Department of Education, Office of Special Education and Rehabilitative Services (OSERS), Washington, DC

Fall Trainee, September 2021 – January 2022

- Drafted federal model guidance on mental health with White House Domestic Policy Council for publishing to states and localities; developed feedback tracker for collaboration among various agencies
- Prepared alternative design proposal for Department designations of Technical Assistance Centers (TACs)

United States District Court for the District of Columbia, Office of the Honorable Judge Zia Faruqi, Washington, DC

Summer Intern, May 2021 – August 2021

- Prepared daily case bench memos to advise judge on scheduled cases; assembled docket charts on JENIE; took notes on judge decisions and drafted judicial orders based on hearing outcomes
- Conducted legal research on novel seizure question and produced detailed memo for judge on recommended action
- Drafted judicial opinion on complex Fourth Amendment federal law decision

Laborers' International Union of North America (LiUNA), Mid-Atlantic Region Office, Reston, VA

Peggy Browning Fellow, July 2021 – August 2021

- Prepared legal memo on the *laches* defense; prepared legal memo on present law relating to forced arbitration and changes per recent decisions
- Conducted legal research; documented client grievances; prepared client documents and took thorough site visit notes
- Analyzed National Labor Relations Board data for ongoing litigation project; prepared FOIA request to NLRB

The HMA Law Firm, McLean, Virginia

Legal Fellow, January 2019 – May 2019

- Instituted a two-pronged case approach: initiated and supervised case completion; developed advocacy plans to expedite and finalize cases
- Engaged clients in multiple languages and formulated leading questions to support their needs; identified necessary filing avenues for their cases

Democratic National Committee, Washington, DC

Senior Organizer, Political and Organizing Department, May 2017 – December 2017

Recruited by Deputy Chairman Keith Ellison as a policy advisor on the progressive values team after the agenda compromises in the party

- Built national millennial outreach program and systemized structure for long-term, future activation; effectively utilized VAN
- Utilized structure to secure record-breaking Virginia victories in all statewide races for the VA Coordinated Campaign
- Mobilized over 100 youth teams to organize hundreds of events and contact tens of thousands of voters; coordinated training/development for teams
- Recruited shifts in multiples of the team total (1,000+ vs. ~300) and in tenfold of the team goal; participated in persuasion and training activities

Office of the Attorney General for the District of Columbia, Washington, DC

Equity Intern, Public Interest/Civil Litigation Division, May 2016 – August 2016

Recruited personally by Deputy Attorney General Natalie Ludaway

- Co-led legal team on class action involving over 1,000 files under an unexpected turn-around of less than two months
- Researched appropriate information for case formation and suggested argumentative strategies; edited legal motions, briefs, and responses
- Instituted various long-term cataloging methods for legal cases of 30+ years; organized case exhibit and files on Relativity; conducted legal research

Yale University Office of Career Strategy, Washington, DC

Director, Yale in DC Program, May 2015 – May 2016

- “Greatest program and highest value-added since its inception.” - led the program through its tenth anniversary and organized dignitary gala
- Organized over 70 events in the span of about 40 days that involved over 1,500 students and alumni; report of accomplishments available [here](#)
- Envisioned, built, and sustained summer mentorship program (100+ pairs)
- Recruited over 200 new alumni in top ranking DC positions (e.g. Bob Woodward, Thomas Pickering, Howard Dean, Brookings President)
- Developed training resources and compiled material packets for successors; instituted systems of news, follow up, confirmation, and gratitude
- Mediated between university officials and DC influencers to strengthen the program for future years; cultivated over 100 new relationships

Booz Allen Hamilton: Cybersecurity- Enterprise Information Security Team, Washington, DC; Herndon/McLean, VA

Information Assurance Policy and Compliance Analyst, June 2014 – August 2014

- Published Cybersecurity Awareness and Personally Identifiable Information/Protected Health Information guidance; drafted Information Categorization policy and procedure; developed and edited Information Security/Protection Training course for all staff
- Generated cybersecurity awareness material inventory, updated databases, recreated and managed internal webpages; screened content for equity

US Department of State Bureau of Information Resource Management, Washington, DC

Virtual Student Foreign Service Officer (assigned to Libya), August 2012 – January 2014

- Crafted the inaugural State Department program in the new Libya: provided consulting services on Constitutional Development, formulated curricula on democracy, identified key leaders on the ground, presented lessons via teleconference (English, Arabic)

United States Congress Office of Congressman James P. Moran, Washington, DC

Special Aide to Legislative Director and Legislative Assistants, May 2013 – August 2013

- Drafted bill on Peace Corps health services, wrote policy briefs for Congressman, met with dignitaries on his behalf
- Utilized internal logging technologies, led Capitol tours, represented office at events, responded to constituent mail/calls

Additional Leadership Experience

Bernie Sanders for President 2020

Virginia Co-Chair, Superdelegate, DNC Rules Committee Appointee, February 2020 – June 2020

- Elected as a PLEO: Public Leader/Elected Official (Superdelegate) to the Democratic National Convention 2020; represented at high profile events
- Appointed to DNC Rules Committee, among four in Virginia with Jeff Weaver (fmr manager); advised; drafted resolutions and mobilized coalitions

Coalition, No Muslim Ban Ever Campaign (<https://www.nomuslimbanever.com>)

Spokesperson, January 2017 – January 2020

- Strategized with national coalition partners on response to Trump’s Muslim ban; developed messaging and participated in Hill briefings, press conferences, and other media-heavy events to successfully make reversing this ban Biden’s first action in office.

Transition Team, Governor-Elect Ralph Northam, Commonwealth of Virginia

Volunteer Team Member, November 2017 – January 2018

- Aided management of policy working groups on local government, education, workforce, trade/commerce, technology, opioids, veterans, etc.
- Advised in change management and identified community leaders of long-standing relationships for potential leadership within the administration

GIVE (Growth and Inspiration through Volunteering and Education), LLC, Fairfax County, VA

Co-founder, President, June 2009 – present (www.giveyouth.org)

- Built completely youth-run, youth-led organization of 12,000+ associates, 10,000+ beneficiaries, over 15,000 dollars in net assets, 20 locations
- Recruited members, liaised with government, school system, and community, managed centers, hired executive team, developed program curriculum, trained volunteers and executives, published children’s book
- Legal and financial consultant: obtained 501c3 status for the organization, managed portfolios and charity account systems, organized robust fundraising campaigns, wrote founding documents, renew membership and status every year

Other Public Service Experience: At-Large Consumer Protection Commissioner (2017-20), Walden Peer Counselor (2016-2017), Fairfax County Student Human Rights Commission (Chair, 2011-2013), Girl Scout Mentor (2013-present), GSCNC- Board Member, GSCNC- National Delegate (2011-13), Libyan Constitution Project (2011), Interfaith Youth Action Group, Tony Blair Faith Foundation (2009-11)

Awards: Phi Beta Kappa of DC Award, Yale Nakanishi Prize for Exemplary Leadership nominee (2017), Northern Virginian of the Year, Women Who Mean Business (WBJ), Women to Watch (Running Start), Byrd Leadership (Byrd Family and VA Supreme Court), Virginia Peace Award (Area faith leaders), Principal’s Leadership (Herff Jones), President’s Gold Award (US President’s Council on Service), President’s Award (Girl Scouts)- chosen among tens of thousands, Gold Award (Girl Scouts), Model Citizen (Girls State, Longwood University), Telly Award

Languages: English (native), Arabic (fluent—written and spoken), Spanish (professional written, proficient spoken)

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: Abrar Esam Omeish
GUID: 808572513

Course Level: Juris Doctor

Entering Program:

Georgetown University Law Center
Juris Doctor
Major: Law/Public Interest
Major: Law/Public Policy

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2020							
LAWJ	001	31	Legal Process and Society	4.00	B+	13.32	
			Nan Hunter				
LAWJ	002	32	Bargain, Exchange & Liability	6.00	B	18.00	
			Gary Peller				
LAWJ	005	31	Legal Practice: Writing and Analysis	2.00	IP	0.00	
			Michael Cedrone				
LAWJ	009	31	Legal Justice Seminar	3.00	B+	9.99	
			Kevin Tobia				
EHrs QHrs QPts GPA							
Current	13.00	13.00	41.31	3.18			
Cumulative	13.00	13.00	41.31	3.18			
Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2021							
LAWJ	003	93	Democracy and Coercion	5.00	B+	16.65	
			Allegra McLeod				
LAWJ	005	31	Legal Practice: Writing and Analysis	4.00	B+	13.32	
			Michael Cedrone				
LAWJ	007	31	Property in Time	4.00	B	12.00	
			Sherally Munshi				
LAWJ	008	31	Government Processes	4.00	B	12.00	
			Howard Shelanski				
EHrs QHrs QPts GPA							
Current	17.00	17.00	53.97	3.17			
Annual	30.00	30.00	95.28	3.18			
Cumulative	30.00	30.00	95.28	3.18			
Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2021							
LAWJ	1631	05	Federal Practice Seminar: Contemporary Issues	2.00	B+	6.66	
			Irving Gornstein				
LAWJ	408	06	Poverty Law and Policy Practicum		NG		
			Peter Edelman				
LAWJ	408	81	~Seminar	2.00	IP	0.00	
			Peter Edelman				
LAWJ	408	85	~Fieldwork	6.00	IP	0.00	
			Peter Edelman				
EHrs QHrs QPts GPA							
Current	2.00	2.00	6.66	3.33			
Cumulative	32.00	32.00	101.94	3.19			

-----Continued on Next Column-----

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2022							
LAWJ	1482	09	Negotiations and Mediation Seminar	3.00	A	12.00	
			Eric Berger				
LAWJ	408	06	Poverty Law and Policy Practicum		NG		
			Peter Edelman				
LAWJ	408	81	Poverty Law and Policy Practicum	4.00	A	16.00	
			Peter Edelman				
LAWJ	408	85	~Fieldwork	6.00	P	0.00	
			Peter Edelman				
LAWJ	530	05	Federal Legislation Clinic		NG		
			David Rapallo				
LAWJ	530	81	~Legislative Lawyering and Client Representation	4.00	B+	13.32	
			David Rapallo				
LAWJ	530	82	~Educational Development	4.00	A-	14.68	
			David Rapallo				
LAWJ	530	83	~Professional Development	2.00	A-	7.34	
			David Rapallo				
EHrs QHrs QPts GPA							
Current	23.00	17.00	63.34	3.73			
Annual	25.00	19.00	70.00	3.68			
Cumulative	55.00	49.00	165.28	3.37			
Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Summer 2022							
LAWJ	361	06	Professional Responsibility	2.00	A-	7.34	
			Stuart Teicher				
EHrs QHrs QPts GPA							
Current	2.00	2.00	7.34	3.67			
Cumulative	57.00	51.00	172.62	3.38			
Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2022							
LAWJ	165	02	Evidence	4.00	A-	14.68	
			Michael Pardo				
LAWJ	178	07	Federal Courts and the Federal System	3.00	B+	9.99	
			Michael Raab				
LAWJ	215	08	Constitutional Law II: Individual Rights and Liberties	4.00	B	12.00	
			Gary Peller				
EHrs QHrs QPts GPA							
Current	11.00	11.00	36.67	3.33			
Cumulative	68.00	62.00	209.29	3.38			
Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2023							
In Progress:							
LAWJ	049	09	Appellate Courts and Advocacy Workshop	3.00	In Progress		
			Supreme Court Institute Judicial Clerkship Practicum				
LAWJ	1174	05	Wrongful Convictions	3.00	In Progress		
			LAWJ 1622 05				
LAWJ	1622	05	Wrongful Convictions	2.00	In Progress		
LAWJ	351	08	Trial Practice	2.00	In Progress		

-----Continued on Next Page-----

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: Abrar Esam Omeish
GUID: 808572513

----- Transcript Totals -----				
	EHrs	QHrs	QPts	GPA
Current				
Annual	13.00	13.00	44.01	3.39
Cumulative	68.00	62.00	209.29	3.38
----- End of Juris Doctor Record -----				

Unofficial

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

March 28, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing with the greatest enthusiasm to recommend Abrar Omeish, a current Georgetown Law student, for a clerkship in your chambers.

Abrar is not a typical candidate. Her grades, although on an upward trend, are below what I am sure you are looking for. But I am writing because I have been very impressed with her. She is smart, hard-working, thoughtful, and committed to public service, she has a stunning record of achievement, and she has excellent judgment. She is well worth careful consideration and would be a great addition to any chambers.

Abrar is a Yale College graduate whose undergraduate record and public service commitment led to her receiving one of our Blume public interest fellowships. This is a newly created program at Georgetown Law that provides full tuition scholarships for a handful of people we think will make great contributions to the public good as lawyers. It is our analogue to NYU's Root Tilden. The selection process is intensely competitive involving interviews and review of the candidate's record. Abrar was one of only six recipients her year.

Her record of achievement is substantial and long-standing. She is the co-founder of a program that, over the past decade, has given free tutoring and mentoring to thousands of underprivileged children. While in Law School, she has served as an elected member of the Fairfax County Board of Education, helping supervise a multibillion dollar budget and navigate the school system through the pandemic. She received over 160,000 votes and is a trailblazer in her role - the first Libyan elected official in the country, the youngest person ever to hold her position. She also served as Virginia Co-Chair for Bernie Sanders. I really don't know how she does it all.

She clearly is someone who gets things done, a key for success as a clerk, and she has a record of working well with others, another crucial element of clerking.

I leave to others commenting on her academic record at Georgetown, since she has not been a student of mine. What I would like to highlight is her thoughtfulness, understanding of different perspectives, and judgment.

I met her when she first came to Georgetown. Even among the Blume Scholars, a remarkable group, she stood out. Not only does she have a great record of public service, she is thoughtful, outgoing, and articulate.

We have had numerous discussions over the past few years, both about her career goals and the school. She has been particularly helpful to me in discussing how to make the law center a welcoming place for Muslim law students. She has reached out to me about this topic, and, at a time in which in our community and so many others, people have difficulty having open conversations with those of different perspectives, Abrar is a model for her openness to other viewpoints and ability to problem solve. Again, I think this would be invaluable in a clerk, enabling her to work through hard issues and grapple with different perspectives.

I have been most impressed with Abrar. I am confident that she would be an excellent clerk, and I hope you will give her application the most serious consideration.

Sincerely,

William M. Treanor
Dean & Executive Vice President
Paul Regis Dean Leadership Chair
wtreanor@georgetown.edu | 202.662.9030

William Treanor - wtreanor@law.georgetown.edu



March 16, 2023

To Whom It May Concern:

I am delighted to recommend Abrar Omeish for a clerkship in your chambers.

Abrar was a student in my Negotiations and Mediation Seminar at Georgetown Law during the Spring 2022 semester. Over the course of six intensive days of study and practice, Abrar distinguished herself as an extraordinarily bright, insightful, curious and well-rounded individual, who brings not only superior intellectual horsepower to her analyses but also the ability to process and apply her learnings in practice. In a seminar of 24 students, Abrar was the standout. She set herself apart through both the leading role she played in classroom discussions and the quality of her written submissions.

Abrar's aptitude for navigating between theory and practice was especially evident in her written work. As part of the course, students are required to write journals where they reflect on what they are learning through readings and classroom discussions and apply it to their own negotiation and conflict resolutions challenges. Abrar's journals were the best in the class, owing in large part to her ability to connect the theories covered in the literature to her professional pursuits. This is the sort of skill that leads me to believe that Abrar would be especially well-suited to a clerkship, where she will have the opportunity to take lessons from her legal education and apply them to her professional practice, often in her written work.

Her ability to thread the needle between theory and practice was exemplified in her final paper, which brilliantly connected the academic research on negotiation to her personal experiences in navigating fraught scenarios in the legal and political spheres. It was one of the most gripping and compelling papers I have graded in my 16 years teaching this course.

In summary, based on Abrar's performance in my course, I can enthusiastically recommend her for a clerkship in your chambers. I am not only confident that she would be a diligent and thoughtful clerk; I also believe that she would take lessons from the experience that would be highly valuable to her continued growth as a legal professional and an active contributor to public discourse about the most important issues facing our nation today.

Yours sincerely,



Eric Berger
Adjunct Professor of Law
Georgetown University Law Center
Tel: (917) 679-6706
Email: emb65@law.georgetown.edu

**Georgetown Law
Supreme Court Institute**
600 New Jersey Avenue, NW
Washington, DC 20001

March 28, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a Professor at Georgetown Law and the Executive Director of the Supreme Court Institute. Abrar Omiesh was a student in my Federal Practice Seminar that I co-teach with Judge Pillard of the D.C. Circuit. Based on my experience with Abrar, I recommend her for a clerkship.

Abrar came to our class with far less background in both the subject matter and the method for analyzing legal problems than her fellow classmates. Her early participation reflected those deficits. But as time went on, she understood more what we were looking for, and she blossomed into one of our favorite participants.

Abrar's has four attributes that stand out and, in combination, made her contributions to the class unique. First, everything she says comes from a commitment to and a passion for social justice. Second, Abrar's comments are framed in terms of the large issues raised by a case. Third, Abrar is unpredictable in terms of how she will come down on an issue. She does not hew to the conventional-she thinks independently about all issues. Fourth, she is fearless and willing to take chances on what she has to say.

All of that was also in evidence in the paper she submitted on *Bivens*. The *Bivens* decision authorized suits against federal officials for violations of constitutional rights. The history of *Bivens* is that it is now a disfavored doctrine. In each succeeding case since the first three, the Court has cut back further and further on its scope. Rather than attempt to carve out and justify some space for *Bivens* that fits in with existing doctrine, Abrar's paper was a frontal assault on the Court's failure to live up to the early promise of *Bivens*.

From our perspective, it would have been more practical and more persuasive to try to carve out a continuing space for *Bivens*, and perhaps suggest some kind of legislative response. The approach Abrar took was, from our perspective, too ambitious for someone who is a second-year law student. But that did not stop Abrar. She is just that committed to her ideals.

Sincerely,

Irv Gornstein
Executive Director

Irv Gornstein - ilg@law.georgetown.edu

703-587-7104 (c)
703-865-6797 (h)

Abrar Omeish
<http://www.linkedin.com/pub/abrar-omeish/47/611/2b5>
aco36@georgetown.edu

3133 Barkley Drive
Fairfax, VA 22031

Please find my writing sample below.

This is a memo I prepared for Judge Ortiz of the Virginia Court of Appeals in advance of his panel hearing in a recent case. It summarizes the case, relevant law, presents a decision recommendation, and provides questions the judge may consider asking during the panel. The case has already been heard.

COURT OF APPEALS OF VIRGINIA
BENCH MEMORANDUM

To: Judge Ortiz
Prepared by: Abrar Omeish
Panel Date and Location: July 26, 2022, Virginia Beach
Judge Assigned: Judge Ortiz
Case Style: *Commonwealth of VA vs. Murrell, Jarvis Cornelius*

Record No.: 1181-21-1
Appealed From: Chesapeake Circuit
Judge: Hon. Rufus A. Banks, Jr.
Counsel for Appellant: Heather Buyrn Crook, Esq. (Buyrn & Crook, Attorneys)
Counsel for Appellee: Jason S. Miyares (Attorney General)
Tanner M. Russo (Assistant Attorney General)

Jarvis Cornelius Murrell (“Murrell”) appeals four convictions by the Circuit Court of the City of Chesapeake (“circuit court”). He argues that the circuit court erred in convicting him because it failed to prove necessary elements in all four charges beyond a reasonable doubt.

The charges and claims are as follows:

- I. DUI With Prior Related Felony DUI under Virginia Codes 18.2-266 and 18.2-270(c)(2), for which they claim Commonwealth fails to prove DUI.
- II. Refuse Breath Subsequent Within 10 Years under Virginia Code 18.2-268.3, for which they claim Commonwealth fails to prove unreasonable refusal.
- III. PWID under Virginia Code 18.2-248, for which they claim Commonwealth fails to prove possession, knowledge, and intent to distribute cocaine.
- IV. Drive While DUI Revoked under Virginia Code 46.2-391(d)(2), for which they claim Commonwealth fails to prove DUI.

Because Murrell argues Commonwealth failed to prove the elements of his convictions, he asks this Court to reverse the circuit court’s decisions. However, because

Murrell did not provide evidence to overcome the standard of review required on appeal, I recommend this court **AFFIRM**.

I. BACKGROUND

On September 20, 2022 at 4:45am, McDonald’s employee Joseph Keenan (“Keenan”) arrived at work and noticed a car “in the middle of the parking lot” (R. 174). After several customers brought this to his attention, Keenan walked outside around 6:20am and noticed that the man, Jarvis Cornelius Murrell (“Murrell”), was not awake (R. 173). Keenan “had to bang on the roof of the car” to wake the man up and asked him to pull into the lot, upon which the man did (R. 175). Keenan did not smell nor see any alcohol in his vehicle (R. 174). After about ten minutes, Keenan noticed the man’s car “on top of the curb... hitting the sign and everything else” and called the police (R. 176).

Chesapeake Police Officer Shannon Velez (“Velez”) arrived in the parking lot at 6:42am and noticed a car with a side front tire on the curb and open side door, still on drive (R. 178-90, 194). Velez woke Murrell up and asked him to step out, upon which he slurred speech and she noticed a strong odor of alcohol and “bloodshot” eyes (R. 180). She asked about Murrell’s consumption, and he stated that he did not have any alcohol since one shot at 1:00am (R.181). He explained that the car was a rental and that he had been driving back from Portsmouth, where his girlfriend was delivering their baby. (R. 182).

Outside of the car, Murrell appeared to “be swaying” (R. 181). Velez did not notice any contraband or evidence of alcohol ingestion at the scene (R. 193), but she conducted the one-legged-stand, the walk-and-turn, and the HGN field sobriety tests (“FSTs”). During the HGN test, she claims to have noticed involuntary eye bounces consistent with intoxication. (R. 182-

84). According to Velez, Murrell “stated that he was done with the FSTs at that point” and that he rejected a breath test he was offered (R. 184).

Murrell claims that he explained how his health complications prohibit him from effectively engaging in the FSTs (R. 256), stating after he stumbled that “I’m having a hard time myself” (R. 183). The officer was aware of this (R. 181). Murrell had shared with her that he had a concussion four months prior, as well as asthma and bronchitis which he took albuterol for at 7:00am that morning (R. 181-82). Officers did not conduct an ABC test, nor a counting backwards test as alternatives (R. 257).

Velez arrested Murrell for DUI suspicion (R. 184). Velez later claimed during trial that she had also looked up Murrell in their system and found a previous license revocation for a third offense DUI conviction on June 12, 2019, as well as a refusal charge on February 4, 2019 (R. 186). During her search, Velez found no drugs, alcohol, or paraphernalia (R. 256), though she did find \$366 in various folded denominations in Murrell’s pocket (R. 190). Copies of the prior convictions were entered as evidence without objection during trial (R. 186).

Officers Fellows (“Fellows”) and Posada (“Posada”) arrived to the scene as back up during the time when Velez was conducting field tests (R. 189, 208). Upon his arrival, Fellows looked inside the open vehicle and “observed a small plastic baggie containing a powdery substance, suspected narcotics,” near the driver seat door (R. 209). He motioned to Posada to join him (R. 209), and both searched the car.

Fellows and Posada did not find anything in the trunk, nor did they find alcohol or any paraphernalia in the car (R. 212-16). Officers did find several additional plastic baggies in the center console near the armrest, 20 of which were empty and three of which had a white powdery substance in them (R.237-38). They also found two credit cards with Murrell’s name

on them and two digital scales—one in the console and another on the passenger seat with white residue on it (R. 225-27, 348-50, 236, 238).

When identifying the baggies to Murrell, Murrell indicated that the officers “must have planted them” in the car (R. 193-94). The driver-side bag Fellows originally identified turned out to be cellophane wrap of “four tied up packaged corner baggies” of a white substance (R. 226-27, 351). The white substance of the baggies in the console and on the driver-side were later tested and found to contain cocaine (R. 351).

Velez transported Murrell to the jail, where Murrell refused to take a breath test twice and signed an acknowledgement of refusal form after it was read to him (R. 187). He was then charged with Refuse Breath Subsequent Within 10 Years, in addition to the DUI With Prior Related Felony DUI, Drive While DUI Revoked, and PWID.

During trial, Detective Terra Cooley (“Cooley”) of the Chesapeake Police Department offered expert testimony on the packaging and distribution of narcotics (R. 241). She testified from her experience that the amount found in the vehicle is consistent with amounts that are “more than likely” being sold (R. 245). While personal use involves consuming half a gram per day on average, reaching about a gram-and-a-half for heavy users according to her testimony, Murrell was found with 11 grams (R. 243-44). According to her, cocaine users generally buy their dose every day, purchasing about three-and-a-half grams “at most” for use “over a couple days” (R. 244).

Cooley also noted that the cash obtained from Murrell in “lots of denominations” is consistent with the behavior of drug distributors, especially in the most common twenty-dollar bill denominations found with Murrell (R. 190, 246). She expressed that these patterns, as well as the use of a rental car, are “very significant” (R. 246).

II. ASSIGNMENTS OF ERROR

Murrell makes four assignments of error, each for failure to prove the elements of his four charges, as outlined:

1. The trial court erred in convicting the Appellant for DUI With Prior Related Felony DUI under Virginia Codes 18.2-266 and 18.2-270(c)(2) because the Commonwealth failed to prove the elements of DUI. Specifically, it failed to prove that the Appellant, beyond a reasonable doubt, was driving under the influence of an intoxicant which impaired his ability to drive.
2. The trial court erred in convicting the Appellant for Refuse Breath Subsequent Within 10 Years under Virginia Code 18.2-268.3 because the Commonwealth failed to prove the elements. Specifically, it failed to prove that the Appellant unreasonably refused, beyond a reasonable doubt.
3. The trial court erred in convicting the Appellant for PWID under Virginia Code 18.2-248 because the Commonwealth failed to prove the elements. Specifically, it failed to prove possession, knowledge, and intent to distribute cocaine, beyond a reasonable doubt.
4. The trial court erred in convicting the Appellant for Drive While DUI Revoked under Virginia Code 46.2-391(d)(2) because the Commonwealth failed to prove the elements. Specifically, it failed to prove the elements of DUI, beyond a reasonable doubt.

III. ANALYSIS

1. Standard of Review

The four claims presented in this case challenge the sufficiency of the evidence. When reviewing such claims, the appellate court must “consider the evidence and all reasonable

inferences fairly deducible therefrom in the light most favorable to the Commonwealth,” *Perry v. Commonwealth*, 280 Va. 572, 578 (2010) (quoting *Bass v. Commonwealth*, 259 Va. 470, 475 (2000)), the prevailing party in this case. While the appellate court is “obligated to set aside the trial court’s judgment when it is contrary to the law and the evidence,” *Tarpley v. Commonwealth*, 261 Va. 251, 256 (2001), the court must determine whether this evidence is such that “any ‘rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *Young v. Commonwealth*, 275 Va. 587, 591 (2008).

The reasonableness of a defendant’s hypothesis is a question of fact. *Wood v. Commonwealth*, 57 Va. App. 286, 306 (2010). Evidence is not limited to that mentioned by parties on the record, *Bolden v. Commonwealth*, 275 Va. 144, 147 (2008), and we give “the benefit of all inferences fairly deducible from the evidence.” *Id.* at 148. Unless the judgment is “plainly wrong or without evidence to support it,” the appellate court affirms. *Bolden*, 275 Va. at 148.

2. The Circuit Court Did Not Err in Convicting Murrell of DUI With Prior Related Felony DUI (I) and Drive While DUI Revoked (IV) When There Was Sufficient Evidence to Meet the DUI Element.

Murrell argues that the DUI With Prior Related Felony DUI and Drive While DUI Revoked charges are in error because the DUI element of each charge has not been proven “beyond a reasonable doubt.” He argues that no admission established the recent imbibing of alcohol, and that only around 1:00am did he consume “one shot” (Appellant Br. 10). He states that “there was only circumstantial evidence” that he was inebriated while driving (Appellant Br. 10-11).

However, Murrell fails to recognize that the Commonwealth “is not required to disprove every remote possibility of innocence,” *Cantrell v. Commonwealth*, 7 Va. App. 269,

289 (1998). Instead, the Commonwealth is “required only to establish guilt of the accused to the exclusion of a reasonable doubt.” *Id.*

Driving under the influence is outlined in the referenced Virginia Code as operating a motor vehicle while under the influence of alcohol or any drug/intoxicant “of whatsoever nature” such that the ability to drive or operate any motor vehicle is impaired. Code § 18.2-266. This could be due to the combination of alcohol and a drug as well. *Id.* This standard does not require blood alcohol levels and can be proven through exhibited symptoms like “manner, disposition, speech, muscular movement, general appearance or behavior” *Thurston v. Lynchburg*, 15 Va. App. 475, 483 (1992).

Commonwealth presented eyewitness testimony through Keenan that Murrell was nonresponsive to such a degree that Keenan “had to bang on the roof of the car” to wake Murrell up when his car was parked in the middle of the parking lot (R. 173). This fact alone is sufficient to infer that the driver is intoxicated. *Propst v. Commonwealth*, 24 Va. App. 791, 795 (1997). This was the case even after a second attempt to correct him, at which point Keenan testified that Murrell’s car was “on top of the curb... hitting the sign and everything else” (R. 176). Importantly, Keenan also testified that Murrell did move his car while he was “knocked out” (R. 168), having “[gone] forward through the intersection... he turned and pulled into the parking lot” after reversing for a bit first (R. 175). Murrell was unable to operate his vehicle when he was found, and he was still unable to after twice being corrected.

This testimony is consistent with the that of Velez, who observed that the car “was still in drive” when arriving at the scene (R. 179). Velez indicated that at this time Murrell had bloodshot eyes, slurred speech, and a “strong odor of alcoholic beverage” (R. 180). Commonwealth also demonstrated through the HGN test that Murrell exhibited involuntary eye

bounces typical of intoxication (R. 182-84) at the time of his stop. When Posada asked him if he had been drinking, he replied “not for real” (R. 234).

Additionally, whether or not Murrell was driving under the influence is a factual matter. The appellate court is required to rule according “the benefit of all inferences fairly deducible from the evidence,” *Bolden*, 275 Va. at 148, “in the light most favorable to the Commonwealth.” *Perry*, 280 Va. at 578.

When viewed in the light most favorable to Commonwealth, the record supports the circuit court’s finding “beyond a reasonable doubt” that Murrell was driving under an influence in the moments leading up to police arrival, if not before. Meeting the DUI element in this way means the circuit court did not err in either conviction. The evidence Commonwealth presented indicates that the circuit court judgment is not “without evidence to support it,” and the appellate court is compelled to affirm the prior court’s decision in such cases. *Bolden*, 275 Va. at 148.

3. The Circuit Court Did Not Err in Convicting Murrell of Refuse Breath

Subsequent Within 10 Years (II) when There Was Sufficient Evidence to Meet the Unreasonable Refusal Element.

Murrell here argues that the Refuse Breath Subsequent Within 10 Years charge is in error because the Unreasonable Refusal element of each charge has not been proven “beyond a reasonable doubt.” He contends that he told officers about his physical and medical issues that interfered with his ability to perform the physical tests (Appellant Br. 8), citing a recent concussion, asthma, and medication he took that morning for bronchitis that resulted in balance issues prohibitive to the balance required to successfully pass the field sobriety tests (R. 267).

The law requires any driver who operates a motor vehicle to consent to blood or breath samples to determine intoxication status when arrested for a DUI violation, as Murrell was in

this case. Va. Code § 18.2-268.2(A). “The circumstances in which one may reasonably refuse the test and abrogate the consent implied by law are narrow,” *Brothers v. Commonwealth*, 50 Va. App. 468, 475 (2007), and “there must be some reasonable factual basis for the refusal,” like health endangerment. *Cash v. Commonwealth*, 251 Va. 46, 50 (1996).

Murrell refused breath testing at the scene and twice again at the station after Velez read an acknowledgement of refusal form to him that he signed (R. 187). He informed the police that he was unable to balance for the sobriety tests because of a recent concussion and medication related to his bronchitis (R. 181-82). When Velez asked whether he was diagnosed with or taking any medications for the concussion he claimed, Murrell said he was not (R. 181). Additionally, throughout trial, Murrell presented no evidence to substantiate claims about his conditions (R. 262), omitting the required “factual basis for the refusal.” *Cash*, 251 Va. at 50. More importantly, Murrell does not cite health as a prohibitive reason in the analysis of his brief for this appeal (Appellant Br. 9).

Finally, whether or not behavior is reasonable is a question of fact. *Archer v. Commonwealth*, 26 Va. App. 1, 12-13 (1997). While reasonableness of concerns around health and the ability to balance can be discussed, the appellate court here can only set aside the trial court’s judgement when it is “contrary to the law and the evidence.” *Tarpley*, 261 Va. at 256. The appellate court is required to rule according “the benefit of all inferences fairly deducible from the evidence,” *Bolden*, 275 Va. at 148, “in the light most favorable to the Commonwealth.” *Perry*, 280 Va. at 578. Here, the absence of “contrary evidence” to indicate a factually-based health condition for Murrell gives the appellate court no grounds upon which to reverse the factual finding of unreasonable refusal.

4. The Circuit Court Did Not Err in Convicting Murrell of PWID (III) when There Was Sufficient Evidence to Meet the Possession, Knowledge, and Intent to Distribute Cocaine Element.

Murrell argues that the PWID charge is in error because the Possession, Knowledge, and Intent to Distribute Cocaine element has not been proven “beyond a reasonable doubt.” He argues that “he made no admissions regarding the Cocaine” (Appellant Br. 11), and that the Commonwealth could not establish that the cocaine was in fact his own, nor that he had an intent to distribute, with anything but circumstantial evidence.

Possession of a controlled substance with intent to distribute means the person “‘intentionally and consciously possessed’ the drug, either actually or constructively, with knowledge of its nature and character, together with the intent to distribute it.” *Jones v. Commonwealth*, 23 Va. App. 93, 100-01 (1996). Proof of possession can be constructive, which means “evidence of acts, statements, or conduct... or other facts or circumstances which tend to show the defendant was aware of both the presence and character of the substance and that it was subject to his dominion and control” *Drew v. Commonwealth*, 230 Va. 471, 473 (1986).

Murrell was “knocked out” (R. 168) and unable to move his car properly after several nudges before police found him in the parking lot with his car on drive and “on top of the curb... hitting the sign and everything else” (R. 176-90). Velez noticed eye movements in him consistent with being under the influence (R. 182-84), and she found a previous license revocation for a third offense DUI conviction as well as a refusal charge just the past year (R. 186). Additionally, Fellows found a cocaine baggie in the driver-side seat of the vehicle Murrell was driving (R. 226-27) such that it was visible to him from outside of the car (R. 209). While it is true that presence of a substance does not immediately nor necessarily imply

possession, *Burchette v. Commonwealth*, 15 Va. App. 432, 435, (1992), it is reasonable to infer from this evidence that, Murrell, having rented and been driving the vehicle, would have noticed it given the offer was able to from a distance. Officers also found credit cards with Murrell's name on them in the vehicle console with the rest of the cocaine baggies, as well as a scale with white residue from the baggies on it on the passenger-side seat of a vehicle only Murrell had been found in for hours. It is reasonable to infer that Murrell would have been aware that two credit cards, in his name, were placed in a closed compartment with these baggies.

Additionally, intent to distribute “must be shown by circumstantial evidence” that corresponds to the conviction. *Wilkins v. Commonwealth*, 18 Va. App. 293, 298-99 (1994). “Circumstantial evidence is as competent and is entitled to as much weight as direct evidence, provided it is sufficiently convincing to exclude every reasonable hypothesis” *Breeden v. Commonwealth*, 43 Va. App. 169, 177 (2004). The Commonwealth “is not required to disprove every remote possibility of innocence,” *Cantrell v. Commonwealth*, 7 Va. App. 269, 289 (1998), and it is explicitly “not required to prove that there is no possibility that someone else may have planted, discarded, abandoned, or placed” contraband where it is found. *Brown v. Commonwealth*, 15 Va. App. 1, 10 (1992).

During trial, the Commonwealth presented Detective Cooley, expert witness on narcotics packaging and distribution, who testified that the amounts found are “more than likely” being sold (R. 245). She stated that the patterns and behaviors Murrell had were “very significant” indicators of drug distribution, including the cocaine quantities, two scales, usage of a rental car, multiple credit cards, and bill denominations in particular bundles. (R. 246). At the same time, Murrell did not present explanation, response, nor evidence regarding any of

these indicators other than Murrell's statement to the police at the time that the bags must have been planted (R. 193-94).

Murrell explains that the "appellate court has the duty to examine the evidence" and to uphold unless a conviction is "plainly wrong or without evidence to support it," *Tarpley*, 261 Va. at 256 (2001), yet Murrell presents no evidence to the contrary nor provides counter narratives to those of the Commonwealth. The appellate court is required to rule according "the benefit of all inferences fairly deducible from the evidence," *Bolden*, 275 Va. at 148, "in the light most favorable to the Commonwealth." *Perry*, 280 Va. at 578. Given an absence of evidence from Murrell and an alternative explanation from the Commonwealth, the appellate court is compelled to affirm.

IV. CONCLUSION

For the reasons stated above, I recommend this Court **AFFIRM**.

QUESTIONS

APPELLANT

- How is Murrell's refusal to participate in the breath tests, as an alternative after saying the field tests were impaired by his health condition, not unreasonable refusal?
 - Why did counsel mention but not argue the health conditions as grounds for why Murrell refused the breath test?
 - Why was evidence not provided of Murrell's health conditions as corroboration of his inability to pass the balancing tests? What evidence is available to substantiate these conditions or reasons?
- According to case law, "whether or not behavior is reasonable is a question of fact." *Archer v. Commonwealth*, 26 Va. App. 1, 12-13 (1997). Are you arguing with the understanding that this is the case? If not, how do you reconcile this idea?
- By asking this appellate court to reconsider the three elements you contest, you are required to assert per *Bolden*, 275 Va. at 148 that the error was to such an extent that it was "plainly wrong or without evidence to support it." What new evidence do you provide for any one of these three claims that could possibly meet this threshold for our standard of review?

- How do you suggest the court overcome the threshold of evaluating the factual evidence in the light favorable to the Commonwealth, when you present no new evidence in this case?

APPELLEE

- What evidence does the Commonwealth rely on to surpass the “beyond a reasonable doubt” standard that Murrell did in fact drive under the influence when officers arrived on the scene after he was in a parking lot?
- What evidence does the Commonwealth rely on to surpass the “beyond a reasonable doubt” standard that Murrell did in fact unreasonably refuse a breath test, given the health conditions he articulated? Why did the officers not conduct an ABC or other verbal sobriety test?
- At what point did Officer Velez actually identify Murrell’s record, and was this information available prior to arrest? If not, what evidence does the Commonwealth consider the most persuasive in establishing a justification for arrest?
- In *Cameron v. Commonwealth* 211 Va. 108, the court finds that a suspicion that the defendant is guilty cannot be sufficient evidence for their guilt. What evidence beyond suspicion do you have, other than Detective Cooley’s testimony, that Murrell did in fact meet the threshold for each component of PWID? What is your response to the Appellant’s concern that no other evidence (cell phones, large sums of money, cutting agents, firearms, etc.) was available, including alcohol or contraband, in the vehicle?

Applicant Details

First Name **Brandon**
 Middle Initial **C.**
 Last Name **Osowski**
 Citizenship Status **U. S. Citizen**
 Email Address bco4xa@virginia.edu
 Address

Address**Street****900 W End Ave, Apt 1F****City****New York****State/Territory****New York****Zip****10025-3538****Country****United States**

Contact Phone Number **8136757252**

Applicant Education

BA/BS From **Florida State University**
 Date of BA/BS **May 2019**
 JD/LLB From **University of Virginia School of Law**
<http://www.law.virginia.edu>
 Date of JD/LLB **May 22, 2022**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Virginia Law & Business Review**
 Moot Court Experience **No**

Bar Admission**Prior Judicial Experience**

Judicial Internships/Externships **Yes**

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Cohen, George
gcohen@law.virginia.edu
(434) 924-3814

Bowers, Josh
jbowers@law.virginia.edu
434-924-3771

Harmon, Rachel
rharmon@law.virginia.edu
(434) 924-7205

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Brandon C. Osowski

900 West End Avenue, Apartment 1F, New York, NY 10025 • (813) 675-7252 • bosowski1@gmail.com

June 4, 2023

The Honorable Jamar K. Walker
U.S. District Court, Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a graduate of the University of Virginia School of Law and am writing to apply for a one-year clerkship in your chambers for the 2024 term.

I am a litigation associate at a law firm in New York City and I would like to move back to Virginia long-term. I am particularly interested in a clerkship in your chambers as I have experience litigating expedited cases and am looking for an opportunity to gain experience with the Eastern District of Virginia's Rocket Docket.

I am enclosing my resume, law school and undergraduate transcripts, and a writing sample. You will also receive letters of recommendation separately from Professors Bowers, Cohen, and Harmon. Professors Bowers, Cohen, and Harmon have said that they would be happy to speak with you directly. If you would like to reach them, Professor Bowers' telephone number is (434) 924-3771, Professor Cohen's email is gcohen@law.virginia.edu, and Professor Harmon's email is rharmon@virginia.edu.

If you have any questions or need to contact me for any reason, please feel free to reach me at the above address and telephone number. Thank you very much for your time and consideration.

Sincerely,



Brandon Osowski

Brandon C. Osowski

900 West End Avenue, Apartment 1F, New York, NY 10025 • (813) 675-7252 • bosowski1@gmail.com

EDUCATION

University of Virginia School of Law, Charlottesville, VA
J.D., May 2022

- GPA: 3.613 (2L & 3L Cumulative GPA: 3.744)
- *Virginia Law & Business Review*, Executive Board
- North Grounds Softball League, Co-Rec Gold

Florida State University, Tallahassee, FL
B.S., Economics and Political Science, May 2019

- Phi Beta Kappa

PUBLICATIONS

Articles

- The End of *Batson*? Rulemaking, Race, and Criminal Procedure Reform, COLUM. L. REV. (forthcoming 2024) (co-authored with Thomas Ward Frampton)

EXPERIENCE

Vinson & Elkins LLP, New York, NY
Litigation Law Clerk, September 2022 – Present

- Second-chaired and prepared witnesses for depositions in relation to a shareholder activism case in front of the Delaware Chancery Court
- Litigated an expedited case through trial in the Delaware Chancery Court in a matter of 5 months

Vinson & Elkins LLP, Houston, TX, *accepted offer* New York, NY
Summer Associate, May 2021 – July 2021

- Drafted a memorandum regarding enforceability of certain contractual clauses related to Chapter 11 bankruptcy proceedings
- Listened in on numerous hearings related to a Chapter 11 bankruptcy in the U.S. Bankruptcy Court for the Southern District of Texas

Wilkes & McHugh, P.A., Tampa, FL
Summer Law Clerk, May 2020 – August 2020

- Drafted responses to motions to dismiss, responses to motions to compel arbitration, motions to enforce a court order, motions to compel discovery, requests for admissions, and requests for production

Hilaman Golf Course, Tallahassee, FL
Pro-Shop Assistant Manager, February 2016 – July 2019

- Managed memberships, including by advising members on membership terms and organizing payment methods

INTERESTS

Golf, Fantasy Football, Cooking, Formula One, Vintage Cars



UNIVERSITY OF VIRGINIA
OFFICE OF THE UNIVERSITY REGISTRAR
P.O. BOX 400203
CHARLOTTESVILLE, VA 22904-4203
www.virginia.edu/registrar

Brandon Charles Osowski

07/11/2022

Date Printed

COURSE NUMBER	COURSE TITLE	GRADE	CREDITS	COURSE NUMBER	COURSE TITLE	GRADE	CREDITS
				LAW 7064	Nonprofit Organizations	A-	3.0
				LAW 7071	Professional Responsibility	A-	3.0

2021 Fall

Issued / Mailed To:

BRANDON OSOWSKI

School: School of Law
Major: Law

LAW 6104	Evidence	A-	4.0
LAW 6105	Federal Courts	A-	4.0
LAW 7179	Race and Criminal Justice	A-	3.0
LAW 9053	Honors of Distinguished Advoc	B+	3.0
LAW 9089	Seminar in Ethical Values (YR)	YR	0.0

2022 Spring

National Id: *****3050
Birthdate: 02/05/XX

School: School of Law
Major: Law

LAW 6102	Administrative Law	A	4.0
LAW 7123	Class Actions/Aggregate Litgtn	A-	3.0
LAW 8000	Advanced Legal Research	A-	2.0
LAW 8018	Trusts and Estates	A-	3.0
LAW 9090	Seminar in Ethical Values (YR)	CR	1.0

End of Law School Record

Degrees Conferred

Confer Date: 05/22/2022
Degree: Juris Doctor
Major: Law

Beginning of Law Record

2019 Fall

School: School of Law
Major: Law

LAW 6000	Civil Procedure	B	4.0
LAW 6002	Contracts	B+	4.0
LAW 6003	Criminal Law	B+	3.0
LAW 6004	Legal Research and Writing I	S	1.0
LAW 6007	Torts	B	4.0

2020 Spring

Due to the global COVID-19 pandemic, the Law faculty imposed mandatory Credit/No Credit grading for all graded classes completed after March 18 in the spring 2020 term.

School: School of Law
Major: Law

LAW 6001	Constitutional Law	CR	4.0
LAW 6005	Lgl Research & Writing II (YR)	S	2.0
LAW 6006	Property	CR	4.0
LAW 7005	Antitrust	CR	4.0
LAW 7786	Topics in Law, Med & Soc (SC)	CR	1.0

2020 Fall

School: School of Law
Major: Law

LAW 7002	Agency, Partnership, & LLCs	A	4.0
LAW 7009	Criminal Procedure Survey	A	4.0
LAW 7017	Con Law II: Religious Liberty	B+	3.0
LAW 7067	National Security Law	A-	3.0

2021 Spring

School: School of Law
Major: Law

LAW 6103	Corporations	A	4.0
LAW 6106	Federal Income Tax	A-	4.0



Louisa Hawthorne
UNIVERSITY REGISTRAR

Florida State University

Office of the Registrar
282 Champions Way
PO Box 3062480
Tallahassee, Florida 32306-2480

Name: Brandon Charles Osowski
Student ID: 200220708
Birthdate: 02/05/1997
Residency: Florida Resident (USA)
Print Date: 10/31/2019

Unofficial Transcript

ALL CREDIT HOURS ON THIS RECORD REFLECTED IN SEMESTER HOURS
May not be released to a third party without permission

Beginning of Undergraduate Record

			<u>Taken</u>	<u>Passed</u>	<u>GPA</u> <u>Hrs</u>	<u>Points</u>
Term GPA	3.750	Term Totals	13.000	13.000	12.000	45.000
Transfer Term GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined Term GPA	3.750	Comb Totals	13.000	13.000	12.000	45.000

Cum GPA	3.844	Cum Totals	26.000	26.000	24.000	92.250
Transfer Cum GPA		Transfer Totals	33.000	33.000	0.000	0.000
Combined Cum GPA	3.844	Comb Totals	59.000	59.000	24.000	92.250

Term Honor: DEAN'S LIST

2015 Fall
Program: Undergraduate Studies
Plan: Pre-Political Science Major

Course	Description	Grd	GB	RP	Taken	Passed	Points
CCJ2020	INTRO TO CRIM JUSTIC	A-	GRD		3.000	3.000	11.250
HUM1920	FIG COLLOQUIUM	S	SOU		1.000	1.000	0.000
PHI2100	RSNNG CRITCL THINKNG	A	GRD		3.000	3.000	12.000
PHM2300	INTRO POLITICL PHILO	A	GRD		3.000	3.000	12.000
STA1013	STATISTICS THRU EXAMP	A	GRD		3.000	3.000	12.000

Test Credits Applied Toward Undergraduate Studies

Course	Description	Grd	GB	RP	Taken	Passed	Points
AMH2010	HISTORY OF U.S. TO 1877	EC	TRN	TEST	3.000	3.000	0.000
BSC1005	GEN BIO NON-MAJORS	EC	TRN	TEST	3.000	3.000	0.000
BSC1005L	GENERAL BIOLOGY LAB	EC	TRN	TEST	1.000	1.000	0.000
ENC1101	FRESH COMP & RHETRC	EC	TRN	TEST	3.000	3.000	0.000
ENC1102	FRESH WRITING RESRCH	EC	TRN	TEST	3.000	3.000	0.000
MAT1033	INTERMEDIATE ALGEBRA	EC	TRN	TEST	3.000	3.000	0.000
MGF1106	MATH FOR LIB ARTS I	EC	TRN	TEST	3.000	3.000	0.000
PSY2012	GEN PSYCHOLOGY	EC	TRN	TEST	3.000	3.000	0.000
SPN1121	ELEMENTARY SPN II	EC	TRN	TEST	4.000	4.000	0.000
SPN2220	INTERMEDIATE SPANISH	EC	TRN	TEST	4.000	4.000	0.000
WOH1030	MODRN WRLD SINC 1815	EC	TRN	TEST	3.000	3.000	0.000

			<u>Taken</u>	<u>Passed</u>	<u>GPA</u> <u>Hrs</u>	<u>Points</u>
Term GPA	3.938	Term Totals	13.000	13.000	12.000	47.250
Transfer Term GPA		Transfer Totals	33.000	33.000	0.000	0.000
Combined Term GPA	3.938	Comb Totals	46.000	46.000	12.000	47.250
Cum GPA	3.938	Cum Totals	13.000	13.000	12.000	47.250
Transfer Cum GPA		Transfer Totals	33.000	33.000	0.000	0.000
Combined Cum GPA	3.938	Comb Totals	46.000	46.000	12.000	47.250

Term Honor: DEAN'S LIST

2016 Spring
Program: Undergraduate Studies
Plan: Pre-Political Science Major

Course	Description	Grd	GB	RP	Taken	Passed	Points
ENC2135	RESEARCH, GENRE, AND CONTEXT	A-	GRD		3.000	3.000	11.250
HUM2944	UNIV HONORS COLLOQ	S	SOU		1.000	1.000	0.000
INR2002	INTERNATNL RELATIONS	B+	GRD		3.000	3.000	9.750
PHI2010	INTRO TO PHILOSOPHY	A	GRD		3.000	3.000	12.000
POS1041	AMER GOV: NATIONAL	A	GRD		3.000	3.000	12.000

2017 Spring
Program: Bachelor's Degree
Plan: Political Science Major

			<u>Taken</u>	<u>Passed</u>	<u>GPA</u> <u>Hrs</u>	<u>Points</u>
Term GPA	4.000	Term Totals	16.000	16.000	15.000	60.000
Transfer Term GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined Term GPA	4.000	Comb Totals	16.000	16.000	15.000	60.000

Cum GPA	3.904	Cum Totals	42.000	42.000	39.000	152.250
Transfer Cum GPA		Transfer Totals	33.000	33.000	0.000	0.000
Combined Cum GPA	3.904	Comb Totals	75.000	75.000	39.000	152.250

Term Honor: PRESIDENT'S LIST

Florida State University

Office of the Registrar
282 Champions Way
PO Box 3062480
Tallahassee, Florida 32306-2480

Name:

Student ID:

Birthdate:

Residency:

Print Date:

Brandon Charles Osowski

200220708

02/05/1997

Florida Resident (USA)

10/31/2019

Unofficial Transcript

ALL CREDIT HOURS ON THIS RECORD REFLECTED IN SEMESTER HOURS

May not be released to a third party without permission

Course	Description	Grd	GB	RP	Taken	Passed	Points	Course	Description	Grd	GB	RP	Taken	Passed	Points
ECO2013	PRIN OF MACROECON Topic: HONORS	A	GRD		3.000	3.000	12.000	ECO3101	INTERMED MICRO THRY	A	GRD		3.000	3.000	12.000
ECO2023	PRIN OF MICROECON Topic: HONORS	A	GRD		3.000	3.000	12.000	INR3932	SPECIAL TOPICS Topic: Stalinism to Putinism:1953-now	A	GRD		3.000	3.000	12.000
HUM4924	FIGS PEER INSTR Topic: UROP Leaders	A	GRD		1.000	1.000	4.000	PAD4075	UAS/DRONES IN EM	A	GRD		3.000	3.000	12.000
IDS2920	UROP COLLOQUIUM	S	SOU		1.000	1.000	0.000	POS4905	DIR INDIV STUDY Topic: COUNTY POVERTY ANALYSIS	A	GRD		3.000	3.000	12.000
PAD4374	INTRO TO TERRORISM	A	GRD		3.000	3.000	12.000	STA2023	FUND BUS STATISTICS	A	GRD		3.000	3.000	12.000
POS3691	LAW AND SOCIETY	A	GRD		3.000	3.000	12.000								

					Taken	Passed	GPA Hrs	Points					Taken	Passed	GPA Hrs	Points
Term GPA	4.000	Term Totals			14.000	14.000	13.000	52.000	Term GPA	4.000	Term Totals		15.000	15.000	15.000	60.000
Transfer Term GPA		Transfer Totals			0.000	0.000	0.000	0.000	Transfer Term GPA		Transfer Totals		0.000	0.000	0.000	0.000
Combined Term GPA	4.000	Comb Totals			14.000	14.000	13.000	52.000	Combined Term GPA	4.000	Comb Totals		15.000	15.000	15.000	60.000
Cum GPA	3.928	Cum Totals			56.000	56.000	52.000	204.250	Cum GPA	3.946	Cum Totals		74.000	74.000	70.000	276.250
Transfer Cum GPA		Transfer Totals			33.000	33.000	0.000	0.000	Transfer Cum GPA		Transfer Totals		33.000	33.000	0.000	0.000
Combined Cum GPA	3.928	Comb Totals			89.000	89.000	52.000	204.250	Combined Cum GPA	3.946	Comb Totals		107.000	107.000	70.000	276.250
Term Honor:		PRESIDENT'S LIST							Term Honor:		PRESIDENT'S LIST					

2017 Summer

Program: Bachelor's Degree
Plan: Political Science Major

Course	Description	Grd	GB	RP	Taken	Passed	Points
MAC1105	COLLEGE ALGEBRA	A	GRD		3.000	3.000	12.000

COMPLETED 4.5 HOURS OF SERVICE TO THE COMMUNITY

					Taken	Passed	GPA Hrs	Points
Term GPA	4.000	Term Totals			3.000	3.000	3.000	12.000
Transfer Term GPA		Transfer Totals			0.000	0.000	0.000	0.000
Combined Term GPA	4.000	Comb Totals			3.000	3.000	3.000	12.000
Cum GPA	3.932	Cum Totals			59.000	59.000	55.000	216.250
Transfer Cum GPA		Transfer Totals			33.000	33.000	0.000	0.000
Combined Cum GPA	3.932	Comb Totals			92.000	92.000	55.000	216.250

2017 Fall

Program: Bachelor's Degree
Plan: Political Science Major
Plan: Economics Additional Major

Program: Bachelor's Degree
Plan: Political Science Major
Plan: Economics Additional Major

2018 Spring

Course	Description	Grd	GB	RP	Taken	Passed	Points
ECO3203	INTERMED MACRO THRY	A	GRD		3.000	3.000	12.000
ECO3622	GROWTH AMERCN	A	GRD		3.000	3.000	12.000
ECP3403	ECONMY BUS ORG & MKT STRUC	A	GRD		3.000	3.000	12.000
POS4905	DIR INDIV STUDY Topic: Honors Topic: COUNTY-LEVEL WELFARE SPENDING	A	GRD		3.000	3.000	12.000

					Taken	Passed	GPA Hrs	Points
Term GPA	4.000	Term Totals			12.000	12.000	12.000	48.000
Transfer Term GPA		Transfer Totals			0.000	0.000	0.000	0.000
Combined Term GPA	4.000	Comb Totals			12.000	12.000	12.000	48.000
Cum GPA	3.954	Cum Totals			86.000	86.000	82.000	324.250
Transfer Cum GPA		Transfer Totals			33.000	33.000	0.000	0.000
Combined Cum GPA	3.954	Comb Totals			119.000	119.000	82.000	324.250

Term Honor: PRESIDENT'S LIST

Florida State University

Office of the Registrar
282 Champions Way
PO Box 3062480
Tallahassee, Florida 32306-2480

Name: Brandon Charles Osowski
Student ID: 200220708
Birthdate: 02/05/1997
Residency: Florida Resident (USA)
Print Date: 10/31/2019

Unofficial Transcript

ALL CREDIT HOURS ON THIS RECORD REFLECTED IN SEMESTER HOURS
May not be released to a third party without permission

2018 Fall		Program: Bachelor's Degree		Program: Emergency Management	
Plan: Political Science Major		Confer Date: 05/04/2019		Confer Date: 05/04/2019	
Plan: Economics Additional Major		Plan: Emergency Management		Degree: Bachelor of Science	
				Program: Political Science	
				Degree Honors: Summa Cum Laude	
				Plan: Political Science	
				Plan: Economics	
				Plan: Completed requirements for the Liberal Studies Honors program.	

Course	Description	Grd	GB	RP	Taken	Passed	Points
ECO3223	FIN MKT/BANK/MON POL	A	GRD		3.000	3.000	12.000
ECO3431	ANALYSIS ECON DATA	A	GRD		3.000	3.000	12.000
ECP4530	ECONOMICS OF HEALTH	A-	GRD		3.000	3.000	11.250
REL2240	INTRO TO NEW TESTAMT	A	GRD		3.000	3.000	12.000

			Taken	Passed	GPA Hrs	Points
Term GPA	3.938	Term Totals	12.000	12.000	12.000	47.250
Transfer Term GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined Term GPA	3.938	Comb Totals	12.000	12.000	12.000	47.250
Cum GPA	3.952	Cum Totals	98.000	98.000	94.000	371.500
Transfer Cum GPA		Transfer Totals	33.000	33.000	0.000	0.000
Combined Cum GPA	3.952	Comb Totals	131.000	131.000	94.000	371.500

Term Honor: DEAN'S LIST

2019 Spring

Program: Bachelor's Degree
Plan: Political Science Major
Plan: Economics Additional Major
Program: Undergraduate Certificate
Plan: Emergency Management Certificate

Course	Description	Grd	GB	RP	Taken	Passed	Points
ECO4421	INTRO ECONOMETRICS	A	GRD		3.000	3.000	12.000
ECS3200	ECONOMICS OF ASIA	A	GRD		3.000	3.000	12.000
PAD4391	FOUNDATNS EMERG MAN	A	GRD		3.000	3.000	12.000
PAD4393	EMERG MGMT PLAN/POL	A	GRD		3.000	3.000	12.000

			Taken	Passed	GPA Hrs	Points
Term GPA	4.000	Term Totals	12.000	12.000	12.000	48.000
Transfer Term GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined Term GPA	4.000	Comb Totals	12.000	12.000	12.000	48.000

Cum GPA	3.958	Cum Totals	110.000	110.000	106.000	419.500
Transfer Cum GPA		Transfer Totals	33.000	33.000	0.000	0.000
Combined Cum GPA	3.958	Comb Totals	143.000	143.000	106.000	419.500

Term Honor: PRESIDENT'S LIST

Degrees Awarded

Degree: Certificate

Undergraduate Career Totals

			Taken	Passed	GPA Hrs	Points
Cum GPA:	3.958	Cum Totals	110.000	110.000	106.000	419.500
Trans Cum GPA		Trans Totals	33.000	33.000	0.000	0.000
Comb Cum GPA	3.958	Comb Totals	143.000	143.000	106.000	419.500

End of Undergraduate

End of Academic Transcript

Beginning of Service Transcript

Community Service Hours For 2017 Summer			
Issue	Agency	Service Task	Hours
Children/Youth	Boys and Girls Clubs of Americ	Mentoring	4.5
Service Hours for 2017 Summer			4.5
Cumulative Service Hours			4.5

Community Service Hours For 2016 Spring			
Issue	Agency	Service Task	Hours
Children/Youth	Boys and Girls Clubs of Americ	Mentoring	3
Health Services	Susan G Komen Foundation	Fundraising	3
Neighborhood Improve	FSU Residence Life	Legal Services	4
Service Hours for 2016 Spring			10
Cumulative Service Hours			14.5

End of Service Transcript

June 05, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Brandon Osowski for a clerkship position with you. Brandon is a solid student in the UVA Law class of 2022. His GPA of 3.56 puts him in the top 36% of the class.

I had Brandon as a student in both online classes I taught this past year: Agency, Partnership & LLCs in the fall and Professional Responsibility in the spring. Brandon earned a grade of A in the fall class and A- in the spring class. In both classes, I boosted his grade based on participation. Although Brandon was not a big participant in class discussion, in both classes he was a very active participant on the online Discussion Board I instituted to add some variety and interest to the online class format. In particular, in Agency, Partnership & LLP, Brandon was tied for the most frequent participant on the Discussion Board.

Brandon often gave detailed, thoughtful answers to the questions I posed on the Discussion Board, applying not only the doctrines we had studied but some of the theories underlying those doctrines. For example, one questions I asked about agency law was why remote principals do not owe a duty of payment to subagents even though they may be vicariously liable for the contracts and torts of those subagents and owe them a duty of indemnity. Brandon gave a thoughtful answer drawing on economic theories we had discussed in class, such as the desire to deter collusive behavior and the least-cost risk bearer. In a question about the vicarious liability of a hospital for a sexual assault committed by an ultrasound technician working for an independent company, Brandon discussed the potential applicability of the nondelegable duty doctrine. In Professional Responsibility, Brandon gave effective responses on the Discussion Board to a number of questions, dealing with issues ranging from aiding and abetting liability for lawyers involved in corporate fraud, to professionalism issues in deciding whether to consent to an extension of time beyond a court deadline, to conflicts of interest for a public service organization representing two classes with potentially opposing interests in the settlement of litigation. Brandon's answers helped facilitate the understanding of other students in the class and I often referred to them in class as examples that students should look at.

Brandon is something of a late bloomer. He struggled a little in his first semester, but he has come on quite strong over the past year of online legal education, earning only one grade lower than an A- in substantive legal courses. Given the challenges of learning law (or anything else) online, this is no small achievement. In my many years of teaching, I have always been impressed by the dedication and drive of students who show marked improvement over the course of their law school careers. They often turn out to be more effective lawyers than students who pick up everything right off the bat. As an example, Brandon recounted to me one of his experiences at his law firm last summer, in which he came up with an argument concerning an opponents e-discovery obligations that his supervisor had not thought of before. That story did not surprise me in the slightest, and I predict there will be many more like it to come.

Brandon's courses and activities in law school reflect his strong interest in business law, which stems from his undergraduate work in economics. In particular, Brandon's role as Articles Review Editor for the Virginia Law & Business Review has exposed him to a great variety of cutting-edge business law topics. Brandon is particular interested in how different regulatory frameworks, including common and statutory law, interest and potentially conflict. That is certainly an important theme in both of the classes Brandon took with me.

Outside of class, I have gotten to know Brandon largely through Zoom office hours. Unfortunately, we have not yet had the opportunity to meet in person, though I certainly look forward to doing so next year. I can say from our conversations, however, that Brandon exhibits an appealing combination of earnestness, eagerness, and decency. He constantly seeks to improve, to build on his past knowledge, and take on new challenges. And he does all this in a quiet, unassuming, yet confident, manner. I have no doubt that Brandon will enjoy a successful career and that he will make a wonderful clerk. I recommend him with great enthusiasm.

Sincerely,

/s/

George M. Cohen

George Cohen - gcohen@law.virginia.edu - (434) 924-3814

June 08, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to highly recommend Brandon Osowski for a clerkship in your chambers. I am a Professor of Law at the University of Virginia School of Law. Additionally, I have clerked for the Honorable Dennis Jacobs of the Second Circuit Court of Appeals.

During Brandon's first law-school semester, he was a very strong student in my sixty-person "Criminal Law" lecture course. I was impressed right from the start. Brandon displayed a natural capacity for doctrinal analysis. He was hard working and diligent and was consistently well prepared for class discussion. He possessed a quiet composure, but, when challenged, he was concurrently unafraid to offer insights that consistently moved class discussions in fruitful directions.

During his final year in law school, he enrolled in my seminar, "Race & Criminal Justice." This upper-level course tackled pressing moral, prudential, and jurisprudential questions (about, for instance, racial disparities in enforcement, prosecution, and punishment). Many students become somewhat paralyzed when presented with tough normative and policy questions for which there are no obvious black-letter doctrinal answers. But Brandon engaged ably with the difficult class materials and offered constructive in-class comments and responses to the readings.

Most importantly for your purposes, Brandon's final seminar paper was one of the best in the class—an insightful examination of state-level reforms to the Batson rule, prohibiting race-based exercises of peremptory challenges. The paper was not only substantively strong but also extremely well written. His prose was powerful, persuasive, and (most importantly) clear. He has an innate understanding for the proper tone and structure necessary to support and coherently present a set of legal arguments and conclusions—skills that will serve him well as a law clerk.

You may notice that Brandon received only an A- for the course—a stellar grade but one that does not quite reflect the quality of Brandon's phenomenal seminar coursework. Unfortunately, I was hamstrung by a strong class and a strict curve, which left me with the opportunity to award only one solid A-. If I could have given a couple more, Brandon would have received one. He well deserved the mark. I was pleased, then, to discover that Brandon earned and received A-level grades in most of his 3L courses. This upward trajectory is something I often see in some of our deepest-thinking students: early on (and especially in exam-based classes), they may struggle just a bit reducing complex problems to concrete answers, but once they find their footing (particularly, when they start to take paper-based courses) they shine.

Apparently, I was not alone in my very positive assessment of Brandon's seminar paper. Brandon shared his work with my colleague, Professor Thomas Frampton, who is a national expert on jury selection and the Batson doctrine. Almost immediately, Professor Frampton invited Brandon to co-author an article, expanding upon the theme of state-level reforms of jury-selection processes. In February, they shared with me their now-completed article, *The End of Batson? Rulemaking, Race, and Criminal Procedure Reform*. It is a brilliant and important paper that melds effectively the doctrinal, theoretical, and historical. My only suggestion was that the paper succeeds in making so many valuable contributions that perhaps it could have provided the basis for three or four publication-worthy articles. In any event, I anticipated that they would receive a publication offer from a top law review, and I was right. As you can see, the article is forthcoming in the *Columbia Law Review*, a stunningly solid placement for a first article.

Finally, I would like to briefly discuss Brandon the person. In law school, he was more than just an exceptional student and writer. His demeanor may be somewhat reserved, but he was admirably active and engaged. He served on the Editorial Board of the *Virginia Law & Business Review*, and he was active in the North Grounds Softball League, which raises annually thousands of dollars for good causes. Most of all, Brandon is a very decent person. I watched him collaborate with his fellow students, and he is quite clearly a team player. He is also extremely mature and unfailingly polite. In short, he was the kind of student that makes teaching easy, and I know that he has what it takes to make a great clerk. He possesses the work ethic and intellect to succeed, and the amiable and humble disposition to make a good addition to any chambers. I hope you will give him that opportunity. If you have any further questions or need additional information, please do not hesitate to contact me.

Thank you,

/s/

Josh Bowers
Professor of Law
University of Virginia School of Law
580 Massie Road
Charlottesville, Virginia 22903
Phone: 434-924-3771
Fax: 434-982-2845

Josh Bowers - jbowers@law.virginia.edu - 434-924-3771

Email: bowers@law.virginia.edu

Josh Bowers - jbowers@law.virginia.edu - 434-924-3771

June 05, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to recommend Brandon Osowski for a clerkship. Brandon was an intelligent, engaged student and will be a excellent clerk.

I taught Brandon in my Criminal Procedure Survey course in the fall of 2021. The course provides an overview of Fourth, Fifth, Sixth, and Fourteenth Amendment doctrines that regulate criminal investigation and adjudication. Like clerking, the course requires reading cases carefully and applying them to new situations. Also like clerking, the course moves very quickly and through large amounts of legal material. Because of COVID, I taught the course entirely by zoom to 65 students. Even in that difficult environment, Brandon stood out. He was on top of the material, thoughtful and analytic in our discussions, and a positive influence on the rest of the class. Despite the obstacles in the way, I felt like I got a sense of him personally and intellectually, and I was not at all surprised when he wrote such a strong exam.

As Brandon's transcript suggests, his grades in my class were no fluke. Nevertheless, I believe his final grade point average considerably understates his academic strength. Brandon is a first-generation law student, who took a semester to get familiar with the law school environment and its exams. As a result, his first semester grades did not fully reflect his abilities. During his second semester, COVID hit, and courses were declared pass/fail, denying him the opportunity to prove what he could do. When grades returned for Brandon's last two years of law school, he was finally able to prove himself, and he showed consistently terrific performance. His grade point average for those two years was a 3.74. These grades reflect what I saw in Brandon's exam: mastery of the law, good writing, and strong analysis. I am confident that this performance reflects how good a clerk he will be.

Brandon's strengths are personal as well as academic. He is a hard worker and excellent at multitasking. As an undergraduate, he had to work 25-30 hours a week to pay his living expenses. He started as a cart cleaner and a golf shop and finished as an assistant manager, all while earning a 3.96 undergraduate grade point average. Every interaction I have with him is pleasant and professional, and he will get along well in any chambers.

I encourage you to consider him closely. Please let me know if I can be of any further assistance.

Sincerely,

Rachel Harmon
Harrison Robertson Professor of Law
Class of 1957 Research Professor of Law
Director, Center for Criminal Justice
University of Virginia Law School
rharmon@law.virginia.edu
(434) 924-7205
fax: 434-924-7536

Rachel Harmon - rharmon@law.virginia.edu - (434) 924-7205

Brandon C. Osowski

900 West End Avenue, Apartment 1F, New York, NY 10025 • (813) 675-7252 • bosowski1@gmail.com

The following writing sample is a persuasive memorandum of law that I drafted in my Advanced Legal Research class. This memorandum discusses a video game company's depiction of a submarine in one of its video games and analyzes whether the use of the submarine constitutes actionable trademark infringement under the Lanham Act or whether it falls under the "expressive work" exception. This memorandum is my own work, and my professor has granted me permission to use it as a public writing sample.

MEMORANDUM OF LAW

TO: Legal Team
FROM: Brandon Osowski
RE: The Ninth Circuit & *Rogers v. Grimaldi*

QUESTION PRESENTED

1) Is Video Games Media's ("VGM") depiction of a trademark protected submarine in their video game entitled to protection under *Rogers v. Grimaldi*'s expressive work exception to Trademark Infringement?

SHORT ANSWER

VGM's depiction of a trademark protected submarine in *Midnight Zone III* does not constitute Trademark Infringement in violation of the Lanham Act because *Midnight Zone III* is an expressive work, and the depiction of the submarine is (1) artistically relevant to the underlying work and (2) does not explicitly mislead the public as to the source of the work.

SUMMARY OF THE FACTS

VGM is a video game developer who recently developed *Midnight Zone III*, a video game that depicts a future world where players develop advanced human settlements on the ocean floor. VGM's goal in creating the game was to provide an ultra-realistic experience for players. In service of this goal, VGM allows players to pilot numerous vehicles. One of these vehicles closely resembles Hadal Industries' Submarine, including logos and distinct markings. In addition to allowing users to pilot this submarine, VGM advertises the ability to pilot a submarine and has included it on the cover of the game.

ANALYSIS

I. Introduction

The Lanham Act, 15 U.S.C. §§ 1051 *et seq.*, protects the owner of a trademark from the use of similar marks if such use is likely to result in consumer confusion. In balancing the public's interest in free speech against the public interest of being free from consumer confusion about affiliation and endorsement, the Second Circuit in *Rogers v. Grimaldi* provides a narrow exception to the Lanham Act, stating that the Act does not apply to expressive works where the use of the trademark has artistic relevance, and the use of the trademark does not explicitly mislead as to the source of the content of the work. *Rogers v. Grimaldi*, 875 F.2d 994, 999 (2d Cir. 1989). In applying the *Rogers* test, the work must be (1) expressive, (2) the use of the trademark must have artistic relevance, and (3) it must not mislead the public. *See id.* The Ninth Circuit subsequently adopted the *Rogers* test in *Mattel*. *See Mattel, Inc. v. MCA Records, Inc.*, 296 F.3d 894 (9th Cir. 2002) (adopting the *Rogers* test for the use of trademarks in titles); *see also E.S.S. Entm't 2000, Inc. v. Rock Star Videos, Inc.*, 547 F.3d 1095 (9th Cir. 2008) (expanding the applicability of the *Rogers* test for trademarks used in the body of a work).

II. *Midnight Zone III* Must be an Expressive Work

For the *Rogers* test to apply, *Midnight Zone III* must be an expressive work. *E.S.S.*, 547 F.3d at 1100. In *Brown*, the Supreme Court stated that video games should receive First Amendment protection, because “video games communicate ideas—and even social messages—through many familiar literary devices (such as characters, dialogue, plot, and music) and through features distinctive to the medium (such as the player’s interaction with the virtual world).” *Brown v. Entm’t Merch. Ass’n*, 564 U.S. 786, 790 (2011). The Ninth Circuit relies on many of these factors to conclude that video games constitute expressive works for purposes of the *Rogers* test.

See Brown v. Elec. Arts, Inc., 724 F.3d 1235, 1241 (9th Cir. 2013); *see also Mil-Spec Monkey, Inc. v. Activision Blizzard, Inc.*, 74 F. Supp. 3d 1134, 1140 (N.D. Cal. 2014) (“Its highly realistic visual graphics, complex narratives, distinctive use of music and sound, and multitude of dimensions on which players may interact with the game and one another, earn *Ghosts* the same status”); *Novalogic, Inc. v. Activision Blizzard*, 41 F. Supp. 3d 885, 898 (C.D. Cal. 2013) (“...based on its compelling narrative and music, distinctive characters, how the players interact with the virtual environment as they complete a series of combat missions, how players can interact with other players, and how players control the fate of the characters and the world that they inhabit, MW3 is an expressive work entitled to as much First Amendment protection as any motion picture or any other expressive work”).

Pursuant to *Brown* and its progeny, *Midnight Zone III* is an expressive work. It depicts a future world with technologically advanced human settlements on the ocean floor where “interaction between the virtual world and the players” is an integral portion of the game, providing a “rich and cinematic experience” for players to experience. As such, the *Rogers* test applies.

III. The Use of Hadal’s Submarine is Artistically Relevant to *Midnight Zone III*

The first prong of the *Rogers* test states that the use of the trademark or other identifying material in the expressive work must have artistic relevance. *Mattel*, 296 F.3d at 902. Demonstrating “artistic relevance” is far from a Herculean feat. “[T]he level of [artistic] relevance...merely must be above zero” for the trademark or other identifying material to be deemed artistically relevant. *E.S.S.*, 547 F.3d at 1100. In acknowledging this low bar, the Court in *E.S.S.* concluded that the inclusion of the “Pig Pen” strip club—which was modeled after the real-life “Play Pen” strip club in Los Angeles—had artistic relevance to Rockstar’s *Grand Theft Auto* game, even though it was “incidental” to the plot and had little to do with the premise of the game.

See id. Similarly, the court in *Mil-Spec Monkey* held that the inclusion of an “angry monkey” patch in a military game, even though a small part of the game, had “some artistic relevance to the creators’ goal of...authenticity during game play.” *Mil-Spec Monkey*, 74 F. Supp. 3d at 1142; *see also Novalogic*, 41 F. Supp. 3d at 898 (“The use of the phrase ‘Delta Force’ and the MW3 Delta Force Logo give users of MW3 a sense of a particularized reality of being part of an actual elite special forces operation and serve as a means to increase specific realism of the game, help[ing] [to] satisfy the ever increasing demand for ‘authentic simulation’ in video games and add immensely to the enjoyment users receive from playing the complicated game...”). In all these cases, the use of the trademark in question was in the service of providing a realistic experience for the user—an integral goal of the creators of the video games in question.

Similarly, VGM aims to design a realistic and cinematic experience where players navigate and build human developments on the ocean floor. Just like the inclusion of a realistic strip club in a satirical depiction of Los Angeles and realistic military patches in the Call of Duty series are artistically relevant to the underlying works, the inclusion of submarines modeled after Hadal’s plays an important role in achieving VGM’s goal of providing a realistic experience for players to navigate and build technologically advanced settlements on the ocean floor. As such, *Midnight Zone III* satisfies the “above-zero” threshold the Ninth Circuit requires for artistic relevance.

IV. *Midnight Zone III* Does Not Explicitly Mislead Consumers

Even when the use of a trademark is artistically relevant to the underlying work, it cannot “explicitly mislead consumers as to the source or the content of the work.” *Mattel* 296 F.3d at 902. This “avoid[s] confusion in the marketplace by allowing a trademark owner to prevent others from duping consumers into buying a product they mistakenly believe is sponsored by the trademark owner.” *E.S.S.*, 547 F.3d at 1100. A junior user of a trademark can explicitly mislead consumers

as to the source of the work by (1) an explicit indication, overt claim, or explicit misstatement regarding consumer confusion as to the source of the content, or (2) by balancing two considerations set out in *Gordon v. Drape* discussed *infra* § IV.B.

A. Explicitly Misleading by Explicit indication, Overt Claim, or Explicit Misstatement

In determining whether the use of a trademark is explicitly misleading, the Ninth Circuit considers “all the relevant facts and circumstances” to determine whether there was “an explicit indication, overt claim, or explicit misstatement that caused such consumer confusion” as to the source of the content. See *Twentieth Century Fox Tel. v. Empire Distrib. Inc.*, 875 F.3d 1192, 1199 (9th Cir. 2017). This is a matter-of-fact analysis. See *id.*

VGM’s use of Hadal’s submarine is not explicitly misleading. First, VGM has not made any explicit indication, overt claim, or explicit misstatement that Hadal endorsed VGM’s depiction of their submarines or is the source of *Midnight Zone III*. VGM simply included the submarine to enhance the realism of the game. Furthermore, incidental consumer confusion absent an “explicit indication, overt claim, or explicit misstatement” is not enough to make the use of a trademark explicitly misleading. See *id.* The “key here [is] that the creator must *explicitly* mislead consumers,” and we accordingly focus on “the nature of the [junior user’s] behavior rather than on ‘the impact of the use.’” *Gordon v. Drape Creative, Inc.*, 909 F.3d 257, 269 (9th Cir. 2018). Accordingly, the use of Hadal’s submarines and its identifying markings in the video game is not explicitly misleading even if some consumers might be confused as to Hadal’s participation in the development of the video game.

Furthermore, VGM’s use of Hadal’s submarines in advertisements and on the cover art of the game does not change the calculus. The Court in *Destefani* found that the use of the senior user’s trademarked airplane in the body of the work, in advertisements, and in the cover art of the

video game was not explicitly misleading because there was no explicitly misleading statement of endorsement. *See Destefani v. Ubisoft Entm't*, 2022 WL 649262, at 5 (C.D. Cal. Jan. 10, 2022). Like *Destefani*, VGM does not make any explicit misstatements or indications in advertisements or in the cover art of the game. Furthermore, the use of Hadal's submarine was not accompanied with misleading statements as to Hadal's endorsement of VGM's game. Therefore, VGM's use of Hadal's trademark in the body of the work, in advertisements, and in the cover art of the game does not reflect the type of "explicitly misleading description of source that *Rogers* condemns." *See id.*

B. Gordon v. Drape Considerations

Absent explicit misstatements, overt claims, or explicit indications, an artistic work can be explicitly misleading by considering (1) the degree to which the junior user uses the mark in the same way as the senior user and (2) the extent to which the junior user has added his or her own expressive content to the work beyond the mark itself. *Gordon v. Drape Creative, Inc.*, 909 F.3d 257 (9th Cir. 2018).

In terms of the first prong, where the senior user and junior user use the mark in different mediums, the "disparate use of the mark [is] at most 'only suggestive' of the product's source and therefore does not outweigh the junior user's First Amendment interests." *Id.* at 270 ("In *MCA Records* and *Walking Mountain*, for example, Mattel's Barbie mark was used in a song and a series of photos; in *E.S.S.*, the mark of a strip club was used in a video game; in *Twentieth Century Fox*, the mark of a record label was used in a television show").

Similarly, VGM uses the submarine in a fictional video game while Hadal is building the submarines for actual use in the real world – two very different mediums. Accordingly, the use of

the submarine is “only suggestive of the product’s source and therefore does not outweigh [VGM’s] First Amendment interests.” *See id.*

In terms of the second prong, when the “mark is used as only one component of a junior user’s larger expressive creation,” the concern over explicitly misleading consumers is diminished. *Id.* However, “using a mark as the centerpiece of an expressive work itself, unadorned with any artistic contribution by the junior user, may reflect nothing more than an effort to ‘induce the sale of goods or services’ by confusion or ‘lessen the distinctiveness and thus the commercial value of a competitor’s mark.’” *Id.* However, when a junior user adds expressive content to the work beyond that of the trademarked item itself, courts have consistently held that the use of the trademark is not explicitly misleading. *See id.* at 271 (noting that “[i]n *E.S.S.*, the use of the Pig Pen strip club was quite incidental to the overall story of the video game, such that it was not the game’s main selling point”); *Destefani*, 2022 WL 649262, at 5 (concluding that the use of the trademarked airplane does not form the centerpiece of the work because “players can choose amongst several iconic vehicles to experience the game’s virtual reality, including cars, trucks, motorcycles, boats, and off-road buggies”).

Similarly, VGM’s use of Hadal’s submarine is surrounded by additional expressive content. *Midnight Zone III* contains a rich and simulated experience of the geology, deep-sea life, human artifacts found on the ocean floor, and numerous other vehicles for the user to choose from. Additionally, the main goal of the game is to build technologically advanced human settlements on the ocean floor, not to learn how to pilot a submarine. As such, the use of Hadal’s submarine is far from the “centerpiece” of *Midnight Zone III*, it is simply one realistic piece of an expansive world that *Midnight Zone III* creates.

Given that (1) VGM does not make an explicit indication, overt claim, or explicit misstatement as to the source of the content of the work; (2) the use of the submarine appears in a different medium compared to the senior user's use; and (3) the submarine is not the "centerpiece" of *Midnight Zone III* demonstrates that VGM's depiction of Hadal's submarine is not explicitly misleading.

C. Contrary Authority Exists, but is not Persuasive

Given that the Ninth Circuit's Circuit Rule 36-3 does not prohibit citation to unpublished cases, it is important to note that the Court in *Textron* – an unpublished case where a video game developer utilized Textron's helicopter in a game by giving prominence to the helicopter, allowing the user to fly the helicopter, and advertising to the consumer as having the ability to fly the helicopter in the game – held that the senior user had alleged sufficient facts to support the inference that the game explicitly mislead consumers to believe Textron is "somehow behind or 'sponsors' *Battlefield 3*." *Elec. Arts, Inc. v. Textron Inc.*, 2012 WL 3042668, at 4 (N.D. Cal. July 25, 2012). In distinguishing this case from previous similar cases such as *E.S.S.*, the Court gave credence to Textron's argument that "the use of [Textron's] helicopters are 'given particular prominence' as opposed to being merely 'incidental,'" like the Pig Pen strip club in *E.S.S.* or the military patches in *Mil-Spec Monkey* and *Novalogic*. *Id.* Moreover, the importance of controlling the helicopters and its advertising carried weight as to whether consumers could plausibly think Textron sponsored the game. *Id.*

Although factually similar, this case is not persuasive. The Ninth Circuit has subsequently indicated that the analysis the *Textron* court utilized is not applicable to the explicitly misleading inquiry. *See Brown*, 724 F. 3d at 1241. Furthermore, the *Textron* court is ruling on a motion to dismiss and, as such, the analysis the Court makes is in the service of determining whether the

allegations are sufficient to establish plausible disputes, not whether EA's use of Textron's helicopter was explicitly misleading.

V. Conclusion

The Lanham Act does not bar VGM's use of a trademark protected submarine in its video game because (1) *Midnight Zone III* is an expressive work; (2) the use of the submarine is artistically relevant to *Midnight Zone III*; and (3) VGM does not explicitly mislead consumers as to the source of the work. *See Rogers*, 875 F.2d at 999. To hold otherwise would chill artistic expression, significantly narrowing one's First Amendment protections. *See Brown*, 724 F.3d at 1245.

Applicant Details

First Name **Miranda**
 Middle Initial **C**
 Last Name **Padilla**
 Citizenship Status **U. S. Citizen**
 Email Miranda.Padilla-1@ou.edu
 Address
 Address

Address

Street
3289 Ridgecrest CT, Apt. 325
 City
Norman
 State/Territory
Oklahoma
 Zip
73072
 Country
United States

Contact
 Phone Number **4328942585**

Applicant Education

BA/BS From **Bates College**
 Date of BA/BS **May 2019**
 JD/LLB From **University of Oklahoma College of Law**
<http://law.ou.edu>
 Date of JD/LLB **May 11, 2024**
 Class Rank **30%**
 Law Review/Journal **Yes**
 Journal(s) **American Indian Law Review**
 Moot Court Experience **Yes**

Moot Court
Name(s) **Hispanic Bar National Moot Court Competition**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **Yes**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Professional Organization

Organizations **Latinx Law Student Association (LALSA), Native American Law Student Association (NALSA), Black Law Student Association (BLSA), Hispanic National Bar Association (HNBA), Mexican American Bar Association (MABA), National Native American Law Student Association (NNALSA)**

Recommenders

Kit, Johnson
kit.johnson@ou.edu

Shaner, Megan
mshaner@ou.edu
4053256619

Jon, Lee
jon.lee@ou.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Honorable Jamar Walker
Walter E. Hoffman
United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Jamar Walker,

I am writing today to express my interest in securing a clerkship at the federal level within your chambers. As a bisexual Indigenous Mexican woman, so much of my identity is intertwined with two of the fields I am keen on pursuing throughout my legal career: Federal Indian Law and Environmental Law. With my passion for these areas of law and my dedication to making a positive impact, I am confident that a clerkship in your esteemed chambers will provide me with invaluable learning experiences and opportunities to contribute meaningfully to the legal field.

These two fields not only intersect with each other often, they also overlap with different areas of the legal landscape quite often. A clerkship in your court offers a unique platform for me to immerse myself in the intricacies of Federal Indian Law and environmental statutes, which are frequently litigated at the federal level, particularly the federal administrative state. In addition, many state statutes are significantly influenced at the federal level. Thus, a federal clerkship will provide me with the unique hands-on experience required to build the skills to successfully practice at both the federal and state levels, provide me with a comprehensive understanding of the federal administrative state firsthand, and allow me to witness different types of advocacies.

As a law student at the University of Oklahoma College of Law, I am an active member of the American Indian Law Review (AILR) and an advisor to the chairperson of the United Nations Committee on Ending Racial Discrimination (U.N. CERD). On AILR, I serve as the Writing Competitions Editor and Assisting Managing Editor. As the Writing Competition Editor, I am responsible for grading and scoring all submissions for the law review's writing competition and the 1L writing competition, where most of the scoring focuses on legal analysis and citations. Then, in my role as Assistant Managing Editor, I am responsible for checking the accuracy and quality of candidate's submissions to our journal. Lastly, as an advisor for the U.N. CERD, I have had to work as a team to prepare reports for State Party Representatives at the U.N. The work included weekly meetings to discuss progress on the specific tasks, next steps for the reports, and work together to design our reports. After my first two sessions, I was promoted to Team Leader, where it was my responsibility to delegate and supervise tasks to a team of four members, as well as provide support as needed and facilitate collaboration between them.

Throughout my legal education, I have gained practical experience as a legal intern at the Oklahoma Indian Legal Services in Oklahoma City, OK and as a clerk at the Western Environmental Law Center in Helena, MT. Throughout these opportunities, I have sharpened my legal and non-legal research skills on a wide range of legal topics and subject matters, including federal statutes such as the Indian Child Welfare Act (ICWA), the American Indian Probate Reform Act (AIPRA), as well as the administrative state, evidence, and civil procedure at both the state and federal level. A clerkship in your chambers would provide me with an environment to further develop my research and writing abilities while contributing to meaningful projects. I believe that my legal experience would make me a valuable addition to your chambers. My strong work ethic and attention to detail have allowed me to excel in demanding environments. Moreover, as an Indigenous Mexican woman, I bring a unique perspective to help tackle complex legal problems.

Thank you for considering my application. I would greatly appreciate the opportunity to discuss further how my skills and experiences align as a clerk within your chambers. Enclosed is my resume for your review.

MIRANDA PADILLA

(432) 894-2585 Miranda.Padilla-1@ou.edu

EDUCATION

The University of Oklahoma College of Law, Norman, OK – candidate for J.D., expected 2024

GPA: 9.32/12 **Rank:** 62/201 (Top 30%)

Honors: American Indian Estates: American Jurisprudence Award (Top Grade in Class)
Deans Honor Roll (Fall 2021, Fall 2022)
1L Moot Court Sweet 16 Team

Activities: Writing Competition Editor/Assistant Managing Editor American Indian Law Review, 2023 Uvaldo Herrera Moot Court Competition Team, 1L Mentor, NALSA Moot Court Coordinator, Head Bailiff National Native American Moot Court Competition, Black Law Student Association (BLSA), Native American Law Student Association (NALSA), Hispanic National Bar Association (HNBA), National Native-American Law Student Association (NNALSA)

The University of London School of Advanced Study, London, England – M.A., 2020

Master of Arts in Understanding and Securing Human Rights with Distinction

Dissertation Title: Fracking in the Amazon: A case study of the impact fracking has on Indigenous peoples in the Brazilian Amazon through Raphael Lemkin's physical and cultural genocide, ecocide, and decolonization

Bates College, Lewiston, ME – B.A., 2019

Major: Politics & Women & Gender Studies with Honors

GPA: 3.49

Honors: Arata Scholar
Office of Intercultural Center Fellow
Harvard Civic Fellowship

Activities: Women of Color, President

WORK EXPERIENCE

Western Environmental Law Center, Helena, MT – Summer 2023 - Present

Clerk. Conduct legal research and draft pleadings, briefs, memoranda, and other legal documents regarding the administrative law on a federal and state level and the Montana Civil Procedures Act. Assist attorneys in preparation of the *Held v. Montana* trial by supporting the development of litigation strategies, attending client meetings, and preparing witnesses.

University of Oklahoma College of Law, Norman, OK – Fall 2022 - Present

Teaching Assistant. Grade and provide feedback on discussion posts in the courses: History of Federal Indian Law and Native American Natural Resources for the Master of Legal Studies in Indigenous Peoples Law. Update courses case list with recent Federal Indian Law cases and work with professors on updating and revising course materials.

United Nations Committee on Ending Racial Discrimination (UN CERD), Norman, OK – Summer 2022 - Present

Advisor to the Chairperson of the UN CERD. Current team leader for the country of Senegal. Former team leader for the country of Argentina. Conducted legal and policy research on different minority groups in Nicaragua, France, and Argentina. Reviewed State Party documents and NGO reports. Translated documents from Spanish to English.

Oklahoma Indian Legal Services (OILS), Oklahoma City, OK – Summer 2022 - Winter 2022

Legal Intern. Conducted legal research on the Indian Child Welfare Act (ICWA) and American Indian Probate Reform Act (AIPRA). Performed intakes of clients and carried out Will Questionnaire Interviews. Drafted Wills and Advice Letters regarding ICWA and AIPRA and Initial Pleadings and First and Final Orders for Probates.

Michael J. Cunningham Attorney at Law, Midland, TX – Summer 2017 - Summer 2021

Legal Intern. Conducted legal research on Wills & Trusts at the law library and on online legal databases. Drafted Wills and Initial Pleadings for Divorce and Custody Proceedings.

SKILLS AND INTERESTS

Proficient in Microsoft Office, Westlaw, Lexis, OSCN.

Enjoy building LEGO sets and creating my own builds, trained mixologist, scary movies, hiking, writing and reading poetry.

The University of Oklahoma College of Law

300 West Timberdell Road
Norman, OK 73019
(405) 325 - 4699
<http://www.law.ou.edu>

Grade Points

A+	12
A	11
A-	10
B+	9
B	8
B-	7
C+	6
C	5
C-	4
D+	3
D	2
D-	1
F	0

**THE UNIVERSITY OF OKLAHOMA COLLEGE OF LAW
UNOFFICIAL TRANSCRIPT**

Padilla, Miranda Claire

Course	Dept	No.	Hours	Grade
Fall 2021				
Legal Foundations	LAW	6100	1	S
Torts	LAW	5144	4	B+
Constitutional Law	LAW	5134	4	A
Research/Writing & Analysis I	LAW	5123	3	B+
Civil Procedure I	LAW	5103	3	B
GPH: 14	GPS: 131	HA: 15	HE: 15	GPA: 9.357
Spring 2022				
Property	LAW	5234	4	B
Criminal Law	LAW	5223	3	B
Civil Procedure II	LAW	5203	3	B+
Intro to Brief Writing	LAW	5201	1	B+
Contracts	LAW	5114	4	A-
Oral Advocacy	LAW	5301	1	B+
GPH: 16	GPS: 141	HA: 16	HE: 16	GPA: 8.812
Summer 2022				
Federal Indian Law	LAW	5610	3	A-
GPH: 3	GPS: 30	HA: 3	HE: 3	GPA: 10.000
Fall 2022				
Native Amer Natural Resources	LAW	5633	3	A
Immigration Law	LAW	6210	3	A
Evidence	LAW	5314	4	A-
American Indian Estates	LAW	6100	1	A
Amer. Indian Estates Clinic	LAW	6400	3	A
GPH: 14	GPS: 150	HA: 14	HE: 14	GPA: 10.714
Spring 2023				
Int'l Business & Human Rights	LAW	6100	3	B+
Administrative Law	LAW	5403	3	B
Business Associations	LAW	5434	4	B
Remedies	LAW	5553	3	B
GPH: 13	GPS: 107	HA: 13	HE: 13	GPA: 8.231
Fall 2023				
Professional Responsibility	LAW	5323	3	
Bankruptcy	LAW	5410	3	
Conflict of Law	LAW	5533	3	

International Law Foundations	LAW	6060	3		
Tribal Courts Seminar	LAW	6700	2		
Alternative Dispute Resolution	LAW	5520	3		
GPH:	GPS:	HA:	HE:	GPA:	
<hr/>					
	GPH	GPS	HA	HE	GPA
OU CUM:	60	559	61	61	9.317
UNOFFICIAL END OF RECORD ***UNOFFICIAL***					

Official Academic Transcript from Bates College

Statement of Authenticity

This official academic transcript has been delivered to you through eSCRIP-SAFE, the Global Electronic Transcript Delivery Network, provided by Credentials eScrip-Safe, 9435 Waterstone Blvd, Suite 260, Cincinnati, OH 45249, 1-847-716-3005. Credentials eScrip-Safe has been appointed and serves as the designated delivery agent for this sending school, and verifies this sender is recognized by the accreditation source identified below

This official academic transcript was requested, created, and released to the recipient following all applicable state and federal laws. It is a violation of federal privacy law to provide a copy of this official academic transcript to anyone other than the named recipient.

This PDF document includes: the cover page, the official academic transcript from the sending school, and the academic transcript legend guide.

The authenticity of the PDF document may be validated at the Credentials eScrip-Safe website by selecting the [Document Validation](#) link. A printed copy cannot be validated.

Questions regarding the content of the official academic transcript should be directed to the sending school.

Sending School Information

Bates College
Registrar and Academic Systems Office
44 Mountain Avenue
Lewiston, ME 04240
Telephone: 207-755-5949
School Web Page: www.bates.edu
Accreditation: New England Association of Schools and Colleges, Comm on Institutions of Higher Ed (NEASC-CIHE)

Student Information

Student Name: Miranda Claire Padilla
Numeric Identifier: Not Provided By the Sending School
Birth Date: Not Provided By the Sending School
Student Email: Not Provided By the Sending School

Receiver Information

mpadilla@bates.edu



Document Information

Transmitted On: Wed, 15 May 2019
Transcript ID: TRAN000016801824

Save this PDF document immediately.

It will expire from the eSCRIP-SAFE server 24 hours after it is first opened.
Validate authenticity of the saved document at escrip-safe.com.

This document is intended for the above named receiver.
If you are not the identified receiver please notify the sending school immediately.

Transcripts marked 'Issued to Student' are intended for student use only.
Recipients should only accept academic transcripts directly from the sending school.

Bates

Official Transcript
Bates College
Office of the Registrar
Lewiston, ME 04240

Date Issued: 15-MAY-2019

Page: 1

Record of: Miranda Claire Padilla
mpadilla@bates.edu

Issued To: Miranda Padilla
mpadilla@bates.edu

Current Program					SUBJ	NO.	COURSE TITLE		CRED	GRD	PTS		
Major : Politics					Institution Information continued:								
Major : Women and Gender Studies					Total Earned Credits 1.00								
Concentration(s) : Law and Society					Winter Semester 2018								
Physical Educ. Req. Completed					AV/GS	287	Gender and Visual Culture		1.00	A-	3.70		
					GS/PT	302	Gender and Conflict		1.00	A	4.00		
					GSS	335	Tobacco: Gender Matters		1.00	A	4.00		
					GSS	400D	Global Feminisms		1.00	A	4.00		
SUBJ	NO.	COURSE TITLE		EARN	GPA	Total Earned Credits 4.00							
			CRED	GRD	PTS								
CREDIT ACCEPTED BY BATES COLLEGE:					Short Term 2018								
Jr Sem Abrd SIT-IHP, Human Rights Program					INDS	S33	Brazil: Sexuality Politics		1.00	B+	3.30		
Total Earned Credits 4.00					Total Earned Credits 1.00								
INSTITUTION CREDIT:					Fall Semester 2018								
Fall Semester 2015					GSS	457	Senior Thesis		1.00	A	4.00		
CM/RE	218	Greek and Roman Myths		1.00	B	3.00	INDS	250	Interdis:Methods&Modes of Inq.		1.00	A	4.00
FYS	450	Race, Justice, American Policy		1.00	B+	3.30	INDS	325	BlackFeministLiteraryTheory&Pr		1.00	A	4.00
GE/PH	111	Polar Environment		1.00	B+	3.30	PLTC	457	Senior Thesis		1.00	C+	2.30
PLTC	171	International Politics		1.00	B+	3.30	Total Earned Credits 4.00						
Total Earned Credits 4.00					Winter Semester 2019								
Winter Semester 2016					AN/LS	205	Anthropology of Citizenship		1.00	A-	3.70		
AA/WS	201	Race, Ethnicity, & Fem.Thought		1.00	B+	3.30	AVC	210	Drawing and Intention		1.00	A-	3.70
BIO	158	Evolutionary Biology		1.00	B	3.00	GS/PT	326	The Politics of Authenticity		1.00	B+	3.30
PHIL	213	Biomedical Ethics		1.00	B+	3.30	GSS	458	Senior Thesis		1.00	A	4.00
PLTC	239	Politics of Space and Place		1.00	B+	3.30	Total Earned Credits 4.00						
Total Earned Credits 4.00					***** TRANSCRIPT TOTALS *****								
					Earned		GPA	GPA	GPA				
					Credit Credits		Points						
					BATES COURSE CREDITS		28.00	28.00	97.80				
Short Term 2016					NON-BATES CREDITS 4.00								
EU/PT	S22	Politics of Memory		1.00	A	4.00	COURSE CREDIT TOTAL		32.00	28.00	97.80		
Total Earned Credits 1.00													
Fall Semester 2016					SHORT TERM CREDITS 3.00 3.00 10.60								
PLTC	222	International Political Econ.		1.00	B-	2.70	GPA TOTAL		31.00	108.40	3.49		
PLTC	346	Power and Protest		1.00	B+	3.30	***** END OF TRANSCRIPT *****						
PT/WS	254	U.S. Women and Politics		1.00	B+	3.30							
WGST	100	Intro to Women & Gender St		1.00	A-	3.70							
Total Earned Credits 4.00													
Winter Semester 2017													
AA/AC	119	Cultural Politics		1.00	A-	3.70							
ASTR	106	Introduction to Astronomy		1.00	B+	3.30							
INDS	301Z	Race and US Women's Movements		1.00	A	4.00							
PT/WS	282	Constitutional Law II		1.00	B+	3.30							
Total Earned Credits 4.00													
Short Term 2017													
PLTC	S49	Political Inquiry		1.00	B+	3.30							
***** CONTINUED ON NEXT COLUMN *****													

Mary Meserve, Registrar

This PDF document may be validated. A printed copy cannot be validated. See attached cover page for additional information.

BATES COLLEGE

Office of the Registrar and Academic Systems

44 Mountain Avenue

Lewiston, Maine 04240-6028

Ph: 207-755-5949 Fax: 207-786-8350

www.bates.edu

Bates College is a coeducational, four-year independent liberal arts and sciences college founded in 1855, enrolling approximately 1700 students. Bates is located in Lewiston, Maine, 140 miles northeast of Boston and 35 miles north of Portland. Admission to the College is highly competitive.

CEEB/ACT 3076 FICE 2036

ACADEMIC YEAR

The academic year is organized into fall and winter semesters of 13 weeks, followed by a Short Term of five weeks. Students register for three to five courses each semester and for one course during Short Term. Short Term courses provide an in-depth study of one academic subject.

DEGREE REQUIREMENTS

- For students prior to the class of 2011: Either (a) thirty-two course credits, sixty-four quality points, and two Short Term units; or (b) thirty course credits, sixty quality points, and three Short Term units. Option (b) is available only for students who graduate in the three-year program. Beginning with the class of 2011: Either (a) thirty-four course credits, two of which must be Short Term course credits, and sixty-eight quality points. No more than two Short Term courses may be applied toward the thirty-four course credit requirements; or, (b) thirty-three course credits, three of which must be Short Term courses, and sixty-six quality points. No more than three Short Term courses may be applied toward the thirty-three course credit requirement. Option (b) is available only to students who graduate in the three-year program.
- Completion of general education requirements.
- All prescribed work in the major field, including at least eight courses.
- Completion of a senior thesis or capstone experience, as determined by the major department or program.
- Completion of the physical education requirement.
- For the Bachelor of Science degree, in addition to the major requirements and the general education requirements, Chemistry 107-108, Mathematics 105-106, and Physics 107-108 or their equivalents.

Each semester course is worth one course credit. This includes courses with laboratory components. No semester hour equivalent is assigned to courses, but it is recommended that each course be evaluated at a minimum of 4.0 semester hours.

THE GRADING SYSTEM

A	Excellent
B	Good
C	Satisfactory
D	Poor
F	Fail
P	Pass
W	Withdrawn
CR	Credit with no grade
S	Satisfactory (Short Term courses only)
U	Unsatisfactory (Short Term courses only)
DEF	Grade deferred until completion of course work
ON	Ongoing course requiring two semesters for credit

These symbols preceding a grade entry denote the following:

- * the grade was originally deferred
- @ the grade is not included in the student's grade point average
- ^ the grade is not included in the student's grade point average and was originally deferred

Quality points are awarded for course work according to the following schedule:

A+ = 4.0	B = 3.0	C- = 1.7	F = 0.0
A = 4.0	B- = 2.7	D+ = 1.3	W = 0.0
A- = 3.7	C+ = 2.3	D = 1.0	P = 2.0
B+ = 3.3	C = 2.0	D- = 0.7	CR = 2.0

Grades earned in a course taken pass/fail, satisfactory/unsatisfactory, on a junior year/semester abroad program, or taken elsewhere and transferred to Bates are not used when computing grade point average. Beginning with students entering in the fall of 2009, letter grades for Short Term courses are used when computing grade point average.

Students may take a total of two Bates courses on a pass/fail basis, with a maximum of one per semester.

Independent study courses have the designation "IS" in the title.

A student is considered in good standing and eligible to re-enroll unless otherwise indicated.

BATES FALL SEMESTER STUDY ABROAD PROGRAM

The College sponsors fall semester abroad programs under the direction of members of the Bates faculty. The grades compute in the student grade point average and generally four course credits are awarded.

JUNIOR SEMESTER AND JUNIOR YEAR ABROAD

Well-qualified juniors may spend one or two semesters in an approved program at a non-U.S. university upon approval from the Committee on Off-Campus Study. Students enroll directly in the university or program and receive academic credit at Bates upon receipt of documentation of satisfactory completion of course work. Total credits earned while studying abroad appear on the Bates transcript.

ACADEMIC HONORS

The college recognizes academic achievement through two kinds of honors: general honors and major field honors. General honors are awarded as follows: Beginning with the class of 2005, cum laude is granted to those students in the highest 15 percent of the class, magna cum laude to those in the highest 8 percent, and summa cum laude to those in the highest 2 percent. Prior to the class of 2005, cum laude, 3.40-3.59; magna cum laude, 3.60-3.79; summa cum laude, 3.80 or higher. Major field honors are awarded to selected students who achieve special distinction in independent study and research in their major field. Prior to 1997, three levels of honors were awarded: Honors, High Honors, and Highest Honors. Thereafter, only one level, Honors, is awarded.

Bates College is accredited by the New England Association of Schools and Colleges, the Carnegie Foundation for Advancement of Teaching, and the American Chemical Society. It maintains chapters of Phi Beta Kappa and Sigma Xi.

Member of the American Association of Collegiate Registrars and Admissions Officers.

Last date transcript key revised: April 2010

TO TEST FOR AUTHENTICITY: This transcript was delivered through the eSCRIP-SAFE® Global Transcript Delivery Network. The original transcript is in electronic PDF form. The authenticity of the PDF document may be validated at escrip-safe.com by selecting the Document Validation link. A printed copy cannot be validated.

This document cannot be released to a third party without the written consent of the student. This is in accordance with the Family Educational Rights and Privacy Act of 1974. ALTERATION OF THIS DOCUMENT MAY BE A CRIMINAL OFFENSE!



UNIVERSITY OF OKLAHOMA COLLEGE OF LAW
300 W Timberdell Road
Norman, OK 73019

Kit Johnson
Professor of Law

June 8, 2023

Dear Judge,

I write to recommend, unreservedly and enthusiastically, Miranda Padilla for a clerkship in your chambers.

I've had the pleasure of teaching Miranda in three courses: Civil Procedure I, Civil Procedure II, and Immigration. Her performance in these classes revealed aptitude for, curiosity about, and commitment to the law. She evidenced a level of engagement that will make for an excellent judicial clerk.

My knowledge of Miranda extends beyond classroom performance. I have enjoyed hours of one-on-one conversation with Miranda. Some of our conversations have been about substantive law, including review of practice exams and clarification of points of doctrine. More have been about personal issues, from extracurricular activities to career plans and family concerns. Miranda is a genuinely fascinating individual with a wealth of unique life experiences—from competitive sports to bartending in England. She has ended up as a law student with a maturity beyond her years.

I know from experience—two years as a clerk for a federal district court judge and one year as a clerk for a federal circuit court judge—that working in chambers can be tough if you do not have the right mix of individuals in the office. It's a unique environment that demands good humor and sociability. Miranda has those qualities in spades. It is the warmth of her personality—combined with her academic aptitude—that led her to be named as a 2L mentor, a role in which she provides peer guidance and support to 1L students. It is a position that takes high emotional intelligence, something that is one of Miranda's many strengths.

Candidly, I will share that I worry that this letter has not done Miranda justice. It is difficult to capture the character of the young woman I have had the pleasure of getting to know over two years in a few short paragraphs. Know that Miranda is singular. She will be a clerk that you'll remember fondly for years after she leaves your chambers. And I am sure you will soon join me as a fellow Miranda cheerleader—excited for her next adventure and invested in her success.

If I can answer any further questions you might have about Miranda's candidacy, please do not hesitate to call me at 310-621-9025 (cell) or to e-mail me at kit.johnson@ou.edu.

Best regards,

Kit Johnson



The University of Oklahoma
COLLEGE OF LAW

Professor Megan W. Shaner
University of Oklahoma College of Law
300 Timberdell Road
Norman, OK 73019
mshaner@ou.edu

June 13, 2023

RE: Letter of Recommendation for Miranda Claire Padilla

Dear Judge Walker,

I understand that Miranda Padilla is applying for a clerkship in your chambers. It is my pleasure to write this letter of recommendation on behalf of Ms. Padilla. She is a smart, hard-working, and detail-oriented student. After reviewing this letter, alongside Ms. Padilla's other application materials, I believe you will agree with my assessment that she has all of the qualities necessary to be an outstanding clerk.

During her 1L year, Ms. Padilla was a well-prepared and contributing member of my Contracts class. She was a student who would ask thoughtful questions and volunteer to engage in classroom discussions. Outside of class, Ms. Padilla would take advantage of office hours – looking to strengthen her skills as a student and lawyer. She took advantage of opportunities to get additional feedback on her legal writing in my class and would discuss her questions and material from class with me in order to gain a better understanding of the law. Ms. Padilla's diligent work resulted in her performance on my final examination placing her 10th out of 50 students in the class.

I again had Ms. Padilla as a student during her 2L year in my Business Associations class. Given the nature of the subject area, Business Associations involves a mastery of different state and federal statutes, case law, and privately-ordered organizational documents. Moreover, the class (and final exam) emphasizes using the law in both transactional and litigation contexts. Ms. Padilla was once again a dedicated student who worked hard over the semester to be able to dissect and apply complex statutory provisions. Her questions revealed a student engaging with the normative and practical issues facing entrepreneurs and policy makers in this area of the law. Ms. Padilla again performed well in my class, finishing in the top half of the class. Candidly, her performance on the multiple-choice portion of the exam is what held back her overall performance. Her essay responses, however, scored in the top third of the class.

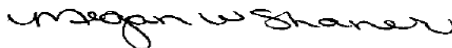
While I have not had the opportunity to directly supervise any of Ms. Padilla's writing projects, in connection with this recommendation I re-reviewed her essay answers on my exams. In her examination responses Ms. Padilla showed both strong writing skills and the ability to understand and apply the legal principles she learned in class. Her responses were clear and well organized, identifying the overall issue and then systematically breaking down the relevant law and facts necessary to reach her conclusion. Further, a comparison of Ms. Padilla's work from her 1L and 2L year show marked growth in her writing and analytical skills, and I can safely assume she will just continue to improve. Based on her performance in my classes it comes as no surprise to me that Ms. Padilla has continued to excel in her studies, being ranked 44th⁵³ out of 201 students, maintaining a B+ cumulative GPA, and being on the Deans Honor Roll.

In addition to her academic obligations, Ms. Padilla is involved in organizations and activities such as the Deans Leadership Fellows, the Native American Moot Court Competition, the American Indian Law Review, the Lantix Law Student Association, the Native American Law Student Association, the National Hispanic Moot Court Team, and serving as a 1L mentor, to name a few. Setting aside her time to participate in these activities illustrates Ms. Padilla's dedication to giving back to the College of Law and her community. Overall, Ms. Padilla is a very involved and vested student and I believe she serves as a good role model for the student body. She is very collegial and is well respected among her classmates, the faculty, and the staff at the College of Law. The fact that Ms. Padilla is able to balance her academic responsibilities and her service commitments to the College of Law goes to further show her strong work ethic.

Finally, as an individual I have been impressed by Ms. Padilla's maturity and positive attitude. In speaking with Ms. Padilla outside of the classroom she has shown me that she is a genuine, caring student who I have no doubt will continue to excel through her third year of law school and become a successful member of the legal community. I firmly believe that Ms. Padilla would be a valuable colleague and a welcome addition to any office.

It is for these reasons that I believe Ms. Padilla is poised to be an excellent law clerk. Ms. Padilla would bring outstanding written, oral, and analytic skills, a sound work ethic, and a wonderful personality to the position. I recommend her without reservation and with a great deal of enthusiasm. If you have any questions regarding this recommendation, please do not hesitate to contact me.

Sincerely,



Megan W. Shaner
Arch B. & Jo Anne Gilbert Professor of Law
President's Associates Presidential Professor

⁵³ This is her class rank as of the writing of this letter, with not all spring grades released.



The UNIVERSITY of OKLAHOMA®
College of Law

June 15th, 2023

The Honorable Jamar Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Recommendation for Miranda Padilla

Dear Judge Walker,

I am thrilled to write this letter in support of Miranda Padilla's application for a clerkship in your chambers. I have had the pleasure of working closely with Miranda in two capacities: first, when she was a student in my Evidence course; and second, as a de facto mentor for her as she charted her career trajectory. Based on my interactions with her and observations of her work product, work ethic, and interpersonal skills, I recommend her enthusiastically for the clerkship.

Miranda was one of the most engaged students I taught in my Fall 2022 Evidence course. Even though the course had over 80 students, I vividly recall Miranda because of my interactions with her. The class is broken up into law firms, and students in each firm have to work together to analyze problems and provide arguments in favor of or against the admission of evidence. Miranda naturally became the leader of her firm, ensuring that they worked collegially on problems and were prepared when they were on call. Without realizing it initially, I unintentionally called on her more than other students precisely because she was so prepared and her answers were well reasoned. That said, Miranda did not dominate the conversation; rather, she consistently demonstrated solid engagement.

Miranda's exam performance in Evidence was stellar. Although she received an A-minus, that grade easily put her in the top 10% of the class. That said, I think that her understanding of the material was even stronger than reflected in the grade. My guess is that, given the constraints of a timed exam, she was unable to fully demonstrate all that she knew. I have also reviewed a paper that she wrote in preparation for writing this letter, and I can attest to her analytical skills and writing ability.

Andrew M. Coats Hall, 300 Timberdell Road, Norman, Oklahoma 73019-5081, PHONE: (405) 325-4699
WEBSITE: LAW.OU.EDU



But where Miranda shone even brighter was outside of the classroom. She regularly came to my regular office hours to discuss issues. It quickly became apparent that she understood the material, however, so our conversation naturally drifted into other issues in the law school (e.g., law journal, student organizations) and her career. Over time, we developed a strong rapport with one another and I came to realize how important it is for Miranda to seek out opportunities in which she will be able to grow and shine. I brought up the idea of clerking with her, but it turned out that she had already been thinking about it. I firmly believe that the opportunity to clerk would be one of which she would take full advantage.

Miranda is also a natural leader at the law school. I am sure that you already have her resume, so I will not list her involvement in student organizations and co-curricular activities. What I can share is the way that she interacts and engages with those organizations. She puts her whole self into anything she does—more so than most students in the law school, to be frank. She is especially interested in ensuring that law students from underrepresented backgrounds, whether they be racial or ethnic minorities, LGBTQI+ individuals, or those from low economic backgrounds—feel included in our community. To this point, I can speak from experience. As a gay man in Oklahoma, I sometimes felt out of place in the state. Miranda makes a point to check in on me, at least as often as I do on her. I hope this anecdote adequately conveys the type of person Miranda is, beyond the things you can glean from reading about her academic achievements.

There is no doubt that Miranda Padilla has the requisite intellect and training to make an excellent law clerk. However, I strongly believe that her passion for what she does, and the care with which she does it, will make her an excellent addition to your chambers.

Please let me know if you have any questions or would like additional information.

Regards,

A handwritten signature in dark ink, appearing to read 'Jon J. Lee', with a stylized, flowing script.

Jon J. Lee

LRW Moot Court Brief

I drafted the attached **appellate brief** as an assignment in my second semester Legal Research and Writing course and **used it** in the Moot Court Competition. The assignment required drafting a brief **arguing that a statute banning surreptitious recordings violated the First Amendment**. I independently conducted all of the research for the assignment. By the assignment's instructions, the brief could not exceed 5,000 words.

No. 22-050

IN THE
SUPREME COURT OF THE UNITED STATES
SPRING TERM 2022

JAMIE WHITTEN,

Petitioner,

v.

STATE OF GARNER,

Respondent.

*On Writ of Certiorari to the
United States Court of Appeals for the
Fourteenth Circuit*

BRIEF FOR PETITIONER

Counsel for Petitioner

QUESTION PRESENTED

The First Amendment provides citizens and the press protections regarding speech and the gathering and sharing of information about government officials. Whitten was convicted of surreptitiously recording her arrest and subsequent conversation in the police-car. Does Garner Statute Title 75, § 52 that bans surreptitious recordings of conversations without notice violate Whitten's First Amendment rights?

TABLE OF CONTENTS

	<i>Page</i>
QUESTION PRESENTED	I
TABLE OF CONTENTS	II
TABLE OF AUTHORITIES	III
OPINIONS BELOW	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	2
SUMMARY OF THE ARGUMENT	4
ASRA VIOLATES WHITTEN’S FIRST AMENDMENT RIGHT TO RECORD HER ARREST AND SUBSEQUENT POLICE-CAR CONVERSATION WITH OFFICERS	7
A. ASRA fails the intermediate scrutiny	7
1. <i>Police Officers are not entitled to the same privacy expectations as non-officers</i>	8
2. <i>The Supreme Court of Garner erred when it relied on the Third Circuit’s ruling in Kelly v. Borough of Carlisle</i>	9
B. ASRA violates Whitten’s First Amendment right to freedom of speech and freedom of the press	11
1. <i>The right to freedom of speech includes the process of speech</i>	11
2. <i>ASRA violated Whitten’s First Amendment right to gather and share government information</i>	12
i. <i>Whitten occupies the role of a journalist because of the circumstances surrounding her arrest</i>	13
ii. <i>ASRA violated Whitten’s right to gather and share information about government officials because police activity is a matter of public interest.</i>	13
CONCLUSION	16

TABLE OF AUTHORITIES

	<i>Page(s)</i>
CASES:	
<i>ACLU v. Alvarez</i> , 679 F.3d 583 (2012).....	11-14
<i>Fields v. City of Philadelphia</i> , 862 F.3d 353 (2017).....	12, 15, 16
<i>Fordyce v. City of Seattle</i> , 55 F.3d 436 (1995).....	14
<i>Glik v. Cunniffe</i> , 655 F.3d 78 (2011).....	8, 9, 11, 13, 14, 16
<i>Katz v. U.S.</i> , 389 U.S. 347 (1967)	8
<i>Kelly v. Borough of Carlisle</i> , 622 F.3d 248 (2010).....	9, 10
<i>Mills v. Alabama</i> , 384 U.S. 214 (1966)	14
<i>Project Veritas Action Fund v. Rollins</i> , 982 F.3d 813 (2020).....	8, 9, 11, 13, 15
<i>Smith v. City of Cumming</i> , 212 F.3d 1332 (2000).....	4, 5, 9
<i>Thornhill v. Alabama</i> , 310 U.S. 88, 101–02, (1940)	14
<i>Turner v. Lieutenant Driver</i> , 848 F.3d 678 (2017).....	4, 6, 9
<i>Ward v. Rock Against Racism</i> , 491 U.S. 781 (1989)	7

CONSTITUTIONAL PROVISIONS:

U.S. Const. amend. I.....4, 5

STATE STATUTES:

Gar. Stat. tit. 75, § 52 (2018)..1, 2, 5, 7, 8, 11, 14, 15

OTHER SOURCES:

Eric M. Larrison, Annotation,
*Criminal and Civil Liability of Civilians and
 Police Officers Concerning Recording of Police Actions*,
 84 A.L.R.6th 89 (Westlaw, last accessed Mar. 11, 2022).....5, 15

Laura K. Layton,
*Defining “Journalist”: Whether and How A Federal Reporter’s
 Shield Law Should Apply to Bloggers*,
 1 Nat. L. Rev. 75 (2011) 12

32 Andre V. Jezic et al.,
Videotaping Police in the Performance of their Duties
 § 32:4 Westlaw (database updated Dec. 2021).....14

OPINIONS BELOW

The opinion of the Supreme Court of Garner is located in the Record. (R. at 6-8.)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the First Amendment of The United States Constitution, which states: “Congress shall make no law . . . abridging the freedom of speech, or of the press . . .” U.S. Const. amend. I. This case also involves Title 75 Section 52,

Subsections (1)-(2), (4):

“[R]ecording all or any parts of a conversation without the consent of all parties violates the right to privacy in communication.”

Gar. Stat. tit. 75, § 52(1) (2018).

Section 2. Exceptions:

Section 1 of this act does not apply to:

A. “An elected or appointed public official when the transcription or recording is of the public official discussing an issue of public concern.”

Gar. Stat. tit. 75, § 52(2) (2018).

Section 4. Definitions:

As used in this statute, the following definitions apply:

“A ‘conversation’ includes the interactions between police officers and citizens if the interaction is filmed by a member of the general public.”

Gar. Stat. tit. 75, § 52(4) (2018).

STATEMENT OF THE CASE

The Crime. Jamie Whitten is accused of violating Garner Statute, Title 75, § 52, also known as the Anti-Surreptitious Recording Act (ASRA), when she filmed her arrest and the subsequent police-car conversations. (R. at 4-5.) On November 9, 2021, Whitten, an animal rights advocate and twenty others went to Wild Animal Safari to protest the breeding practices of Cats by Carter (CBC). (R. at 3-4.) During the protest, Whitten took her Iphone 13 Pro out of her pocket and began to record the protest as a truck pulled up to the entrance. (R. at 4.) Shortly after the truck arrived, Whitten slipped the phone back in her pocket. (R. at 4.) After being identified by the driver, Whitten was arrested by Officer Coffee. (R. at 4.) Whitten was then transported to the station by Officer Coffee and Officer Theodore. (R. at 4.) Before Whitten was placed in her holding cell, Officer Coffee asked Whitten to empty her pockets. (R. at 4.) When emptied her pockets, Officer Coffee noticed her phone was recording. (R. at 4.) When asked by Officer Coffee if she was recording, Whitten did not answer. (R. at 4.) She did, however, stop recoding when prompted by Officer Coffee. (R. at 4.) Officer Coffee confiscated her phone on the belief that Whitten violated ASRA by recording her arrest and subsequent police-car conversations. (R. at 4.) Whitten pleaded no contest to the charge, preserving her right to appeal. (R. at 5).

Appeal. The Supreme Court of Garner affirmed Whitten's. (R. at 2.) Whitten filed a petition for certiorari, claiming that ASRA violates her First Amendment

right to record conversations without notice, specifically recording her arrest and the subsequent police-car conversations. (R. at 4).

This Court granted Whitten's writ of certiorari to determine whether ASRA violates the First Amendment as applied to Whitten. (R. at 1.)

SUMMARY OF THE ARGUMENT

The First Amendment of the Constitution guarantees the right to free speech and freedom of the press. U.S. Const. amend. I. The right to record police is recognized as a First Amendment right in many circuits depending on restrictions. *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000). Because of the time, manner, and place restrictions on the recording of police, this Court should not lean on precedent when deciding the outcome of this case and look at this case individually. *Turner v. Driver*, 848 F.3d 678 (5th Cir. 2017).

ASRA is unconstitutional for three main reasons. First, ASRA fails intermediate scrutiny because the state's argument that police are entitled to privacy is not a substantial government interest. Second, ASRA violates the First Amendment right to free speech because the act of recording is speech. Last, because Whitten is a journalist and was recording a matter of public interest, police activity, ASRA violates her right to gather and share government information. For these reasons the Court should find that ASRA violates Whitten's First Amendment rights.

ARGUMENT AND AUTHORITIES

Garner Statue Title 75, § 52 (2018) violates Whitten's First Amendment right to freedom of speech. The First Amendment states "Congress shall make no law . . . abridging the freedom of speech, or of the press. . ." U.S. Const. amend. I. To pass the constitutional muster of intermediate scrutiny a statute must be substantially related to a government interest. Anti-Surreptitious Recording Act (ASRA) § 1 fails intermediate scrutiny because "the right to privacy in communication" is not a substantially related government interest regarding police privacy. Gar. Stat. tit. 75 § 52(1). ASRA § 1 also violates Whitten's First Amendment right to freedom of speech and freedom of the press because the banning of surreptitious recording "all or any parts of a conversation without the consent of all parties" infringes on Whitten's process of speech and her right to gather and share government information. *Id.* Further, Whitten's actions of recording the police surreptitiously falls within an exception of ASRA; ASRA § 2(A): "An elected or appointed public official when the transcription or recording is of the public official discussing an issue of public concern." § 52(2).

Several circuit courts have held that there is a right to record police in public spaces under the First Amendment, subject to "time, manner, and place restrictions." *See Smith v. City of Cumming*, 212 F.3d 1332, 1333 (2000). However, some courts, such as the Third Circuit, have found that the right to record police is not protected under the First Amendment. *See Eric M. Larsson, Annotation, Criminal and Civil Liability of Civilians and Police Officers Concerning Recording of Police Actions*, 84 A.L.R. 6th 89 (2013). Because of the circuit split, it is not

clearly established that the right to record police in public and privates exists within the First Amendment. However, no circuit court has held that the right “does not extend to the video recording of police activity.” *Turner v. Lieutenant Driver*, 848 F.3d 678 (2017). Because this Court has instructed the lower courts to not take a high generality when discussing established law, as the right to recording police has been established, this Court should look at these cases on a case-by-case basis and not lean heavily on precedent. *Id.* at 678.

The right to record police is a right that has been recognized by many circuit courts, meaning that Whitten was within her rights to record her arrest and police-car conversations. However, because it has not been established within the circuits that that right is protected under the First Amendment, and it has not been established if the right extends to arrests and police-car conversations, the Garner Supreme Court erred by relying on the Third Circuit’s decision in *Kelly v. Borough of Carlisle*. *Kelly v. Borough of Carlisle*, 622 F.3d 248 (3d Cir. 2010). Given that these cases should be decided on a time, manner, and place analysis, the Court should look at the facts of this case and find that ASRA fails intermediate scrutiny, violates Whitten’s First Amendment right to freedom of speech, and violates her right to gather and share government information as she occupies the role of a citizen journalist. *Smith*, 212 F.3d at 1333.

ASRA VIOLATES WHITTEN'S FIRST AMENDMENT RIGHT TO RECORD HER ARREST AND SUBSEQUENT POLICE-CAR CONVERSATION WITH OFFICERS.

A. ASRA fails intermediate scrutiny.

ASRA fails intermediate scrutiny. ARSA § 1 uses the language, “the right to privacy in communication,” emphasizing that one of the government interests is to ensure that individuals who expect privacy during a conversation are given that privacy. Gar. Stat. tit. 75 § 52(1). In this case, the Court must determine if Officers Coffee and Theodore were entitled to privacy while they were arresting and transporting Whitten to the station.

Under *Ward v. Rock Against Racism*, ASRA must be “narrowly tailored to serve a significant governmental interest, and [] leave open ample alternative channels for communication of the information.” *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (quoting *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984)). To be narrowly tailored it must be speech that is not the “least-restrictive or the least-intrusive means of doing so.” *Ward v. Rock Against Racism* at 798.

One of the identified government interests is privacy. (R. at 3.) To help achieve this government interest, the Garner legislature ratified ASRA. Under *Ward*, the government interest of privacy, especially for police officers is not a narrowly tailored government interest.

1. *Police Officers are not entitled to the same privacy expectations as non-officers.*

To determine whether police are entitled to privacy, this Court should look to the two-fold privacy analysis found in Justice Harlan’s concurrence in *Katz v. United States*. The first step looks to see if the entity has an expectation of privacy. *Katz v. United States*, 389 U.S. 347, 361 (1967). The language of ASRA, specifically “the right to privacy in communication” suggests that police, like non-officers, are entitled to privacy. Gar. Stat. tit. 75 § 52(1). However, that is simply not the case when police are performing their duties. This is evidenced by the fact that numerous courts have found that people are allowed to record police in public when they are performing their duties. *Glik v. Cunniffe*, 655 F.3d 78, 84 (1st Cir. 2011). If there was an objectively reasonable expectation of privacy, courts would not have allowed for police to be recorded anywhere in public. *Project Veritas Action Fund v. Rollins*, 982 F.3d 813, 822 (5th Cir. Dec. 2020).

The second step of the privacy analysis is that “the privacy expectation is one that society is prepared to recognize as ‘reasonable.’” *Katz*, 389 U.S. at 361. Evidenced by the fact that people are constantly recording police activity, including arrests, serves as proof that the public does not recognize that police have the same expectation of privacy. *Project Veritas* 982 F.3d at 822. This case is most similar to *Project Veritas*. *Project Veritas* involved a Massachusetts statute that made it a crime to record government official’s discharging their duties in public spaces without their consent, and the recording of conversations with a people who had a

reasonable expectation of privacy. *Id.* at 820. In *Project Veritas*, the plaintiffs filed suit, claiming that portions of the Massachusetts statute violated their First Amendment right to gather and share government information. *Id.* The court held that statute did not meet the constitutional muster of intermediate scrutiny because it was not “narrowly tailored to further. . . prevent [] interference with police activities and protect [] individual privacy.” *Id.* at 836. The court stated that preventing interference with police activities is not a substantial government interest because police officers are expected to “endure significant burdens caused by citizens’ exercise of their First Amendment rights.” *Glik*, 655 F.3d at 84. This burden includes a lack of privacy when performing their official duties. *Project Veritas*, 982 F.3d at 838. Because police privacy is not a narrowly tailored government interest, this Court should follow *Project Veritas* and find that ASRA does not pass the constitutional must of intermediate scrutiny.

2. The Supreme Court of Garner erred when it relied on the Third Circuit’s ruling in Kelly v. Borough of Carlisle.

The right to record police is subject to “time, manner, and place restrictions.” *Smith*, 212 F.3d at 1333. The Garner Supreme Court stated that because of these restrictions, ASRA does meet intermediate scrutiny, because it allows surreptitious recording in some exceptions and consensual recording. (R. at 6-7.) However, the “time, manner, and place restrictions” mean that courts should analyze these cases on a case-by-case basis and not rely heavily on precedent. *Id.*; *Turner v. Lieutenant Driver*, 848 F.3d at 678. This case is factually different than *Kelly v. Borough of Carlisle*, the case from the Third Circuit that the Supreme Court of Garner relied

on. In *Kelly*, Kelly was out with his friend, Tyler Shopp, who was pulled over for speeding and violating the bumper height restrictions. *Kelly v. Borough of Carlisle*, 622 F.3d 248, 251 (3d Cir. 2010). During the traffic stop, Kelly began to record Officer Rodgers “after he saw how [Officer Rodgers] was acting’ . . . and yelling at Shopp.” *Id.* Officer Rodgers placed Kelly under arrest for violating the Pennsylvania Wiretap Act. The Third Circuit held that Kelly’s First Amendment right to record during a traffic stop was not violated because “the cases addressing the right to information and the right of free expression do not provide a clear rule regarding First Amendment rights to obtain information by videotaping under the circumstances presented here.” *Id.* at 263.

Whitten pleaded no contest when she recorded her arrest and subsequent police-car conversation with Officer Coffee and Officer Theodore. Whitten was arrested at an animal rights protest on Wild Animal Safari after she threw a rock and hit someone. (R. at 3-4.) Prior to her interaction with police, Whitten had already been recording the protest at Wild Animal Safari. (R. at 4). Unlike Kelly, Whitten did not pull out her phone after she began to interact with the police. Nor did she pull out her phone because she felt unsafe because of the Officers behavior. Because this case is factually different than Kelly, and because it has been established that people can record police while they are performing their duties, this Court should find that the Supreme Court of Garner erred when it relied on the Third Circuit for guidance, and that ASRA violates the First Amendment.

B. ASRA violates Whitten's First Amendment right to freedom of speech and freedom of the press.

1. *The right to freedom of speech includes the process of speech.*

Whitten's right to record police is constitutional under the First Amendment's right to free speech. The right to record falls within the right to free speech because there is "no line between the act of creating speech and the speech itself." *ACLU of IL v. Alvarez*, 679 F.3d 583, 596 (7th Cir. 2012). The right to record has long been recognized as a mechanism for speech. *Id.* Whitten was accused of recording the police surreptitiously and violating ASRA by recording "all or any parts of a conversation without the consent of all parties" because the Officers were not aware that she was recording. *See* Gar. Stat. tit. 75, § 52(1). However, while police officers are operating within their official duties publicly, consent of the other party is not needed. *Project Veritas*, 982 F.3d at 820; *see also Glik*, 655 F.3d at 82. The arresting officers at the time were being recorded by Whitten while performing their official duties. (R. at 4-5.) They were arresting Whitten and transporting her to the station. (R. at 4-5.) Meaning, Whitten was within her right to record her arrest and subsequent police-car conversation. Because Whitten was within her right to record and because the act of recording is a process that is protected under the First Amendment's right to free speech, ASRA violated her First Amendment right to free speech.

2. ASRA violated Whitten's First Amendment right to gather and share government information.

The First Amendment freedom of the press gives individuals of the press the right to gather and disseminate information without government interference. *ACLU*, 679 F.3d at 597. Under freedom of the press, “the act of making an audio or audiovisual recording . . . [i]s a corollary right to disseminate the resulting recording.” *Id.* at 595. Those who are protected under the press includes reporters, the media, and journalists. There is variation among the states about who is a designated journalist. Some states have adopted a reporter-based notion, but other states have established that journalistic privilege extends “to all persons who gather and disseminate news to the public.” Laura K. Layton, defining “Journalist”: *Whether and How A Federal Reporter's Shield Law Should Apply to Bloggers*, 1 Nat. L. Rev. 75 (2011). While there is no consensus among states as to who constitutes a journalist, there is no question that the advancement of technology today has allowed non-trained journalists to occupy the role of the press, because of their ability to break news stories and share information just as quickly as news outlets. *Fields v. City of Philadelphia*, 862 F.3d 353, 360 (3d Cir. 2017). The technological advancement of devices with video-recording capability means that images, videos, and recordings about current events come from participants and observers. *Id.* “A citizen's audio recording of on-duty police officers' treatment of civilians in public spaces while carrying out their official duties, even when conducted without an officer's knowledge, can constitute newsgathering every bit as much as a

credentialed reporter's after-the-fact efforts to ascertain what had transpired.”

Project Veritas, 982 F.3d at 833.

i. Whitten occupies the role of a journalist because of the circumstances surrounding her arrest.

Based on the facts and circumstances surrounding her use of her Iphone 13 Pro to record, Whitten occupied the role of a journalist. Whitten was at an animal rights protest at Wild Animal Safari protesting the conditions and breeding practices of CBC. (R. at 3.) Whitten, a prominent animal rights advocate was there on behalf of Garner Animal Shelter. (R. at 3.) During the protest Whitten visibly pulled out her Iphone 13 Pro when a truck began to pull into the entrance and began recording (R. at 4.) Given Whitten’s status as an animal rights advocate and the circumstances surrounding her recording, it can be inferred that Whitten was going to share the video for public consumption to bring awareness to the ill practices of CBC and Wild Animal Safari. Because Whitten occupied the role of a journalist during the protest, her protections under the First Amendment extend to her subsequent arrest and police-car conversation,

ii. ASRA violated Whitten’s right to gather and share information about government officials because police activity is a matter of public interest.

The First Amendment right to gather and share information about government officials is guaranteed under the freedom of the press clause. *ACLU*, 679 F.3d at 597. Under the freedom of the press clause, Whitten had the right to record police. In *Glik*, the court held that the “gathering of information about government officials in a form that can readily be disseminated to others serves a

cardinal First Amendment interest in protecting and promoting ‘the free discussion of governmental affairs.’” *Glik*, 655 F.3d at 82 (quoting *Mills v. Alabama*, 384 U.S. 214, 218 (1966)). Expanding the right to record police while they are making an arrest and within their police-cars would give people the opportunity be involved in the community by “freely exercising their freedom of speech” and allowing citizens to, “embrace[] at the least the liberty to discuss publicly and truthfully all matters of public concern.” *ACLU*, 679 F.3d at 597 (quoting *Thornhill v. Alabama*, 310 U.S. 88, 101–02, (1940)). These are values and the liberties that this country was founded upon. By allowing citizens to have a say in police activity, they are participating in a public interest. *Fordyce v. City of Seattle*, 55 F.3d 436 (9th Cir. 1995).

In regard to police activity, “the freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state.” 32 Andre V. Jezic et al., *Videotaping Police in the Performance of their Duties* § 32:4 Westlaw (database updated Dec. 2021). While recording is not verbal speech, ASRA recognizes police interactions as a form of conversation just like oral speech. Gar. Stat. tit. 75, § 52(4)(A). Whitten being able to record the police surreptitiously during her arrest and police car conversation is an exercise that is guaranteed under freedom of the press. More so, because of her ability to engage with the public through her recording of her arrest and police-car conversation which are matters of

public interest, Whitten's role as occupying that of a journalist was further solidified.

Whitten's arrest and police-car conversation is a matter of public interest because of the recent awareness in police brutality. Advancement in technology, has allowed individuals to easily record and share videos, photographs, audio-recordings of interactions between the police and people. Larsson, *supra* p. 5. Much of these images and recordings have occurred without police consent. *Id.*

While not having consent violates ASRA by "recoding all or any parts of a conversation without the consent of all parties," the benefits of recording police without notice outweigh the negatives. *See* Gar. Stat. tit. 75, § 52(1). Allowing people to record without police consent works to increase public awareness about the "conduct of law enforcement" that may be different or not how officers would conduct themselves if they knew they were being recorded. *Project Veritas*, 982 F.3d at 833. The plaintiffs in *Project Veritas* noted that "audio recording [surreptitiously] can sometimes be a better tool for 'gathering information about' police officers conducting their official duties in public." *Id.* Meaning that Whitten recording her interaction with the officers during her arrest and the conversation in the police-car would have added to the awareness of the public in police brutality. There are also practical reasons to allow people to record their arrest and conversations in police cars. Recording police would allow for gaps to be filled when police officers fail to turn on their body and dash cameras or choose to withhold footage from the public.

Fields, 862 F.3d at 359. It would highlight abuse, hold police accountable, and promote a better functioning government. *Glik*, 655 F.3d at 82.

Arguably, allowing individuals to record their arrest and subsequent police-car conversations would interfere with police when they are performing their duties. This argument was raised in *Fields*. The court ruled that the defendants photographing and recording police did not interfere with police activity and, therefore, their arrest violated the First Amendment. *Fields* 862 F.3d at 360. *Fields* provided an example of what kind recording or videotaping would interfere with police activity: “recording a police conversation with a confidential informant.” *Id.* at 361. Further, the First Circuit in *Glik* held that Glik videotaping police officers did not interfere with the officers performing their duties and therefore his action of videotaping was protected under the First Amendment. *Glik*, 655 F.3d at 84. Here, Whitten’s recording did not interfere with her arrest or with the officers driving her to the station, as evidenced by the fact that Officer Coffee did not even realize Whitten was recording until he asked Whitten to empty her pockets. (R. at. 5.) Because Whitten’s recording did not interfere with the Officers performing their duties, and ASRA violates Whitten’s right to gather and share information about police activity, this Court should find that ASRA violates Whitten’s First Amendment right to freedom of the press.

CONCLUSION

Because Anti-Surreptitious Recording Act (ASRA) fails intermediate scrutiny; violates petitioners First Amendment right to gather and share

information about government officials, a right that is guaranteed under the First Amendment; ASRA is unconstitutional because it violated the First Amendment. Petitioner respectfully requests that this Court REVERSE the Supreme Court of Garner and find petitioner not guilty of violating ASRA.

Respectfully submitted,
Attorney for Petitioner
123 Main Street
Garner City, Garner 88888
(555) 222-1111 Telephone
(555) 222-1112 Facsimile
MoreJustice@OULaw.com

CERTIFICATIONS

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this brief for Petitioner was served on all parties on March 6, 2022, by depositing the briefs in the U.S. Mail, postage prepaid or by personal delivery.

CERTIFICATE OF COMPLIANCE

I certify that this brief contains 4,734 words, including every page except appendices, if any.

Respectfully submitted,
Attorney for Petitioner
123 Main Street
Garner City, Garner 88888
(555) 222-1111 Telephone
(555) 222-1112 Facsimile
MoreJustice@OULaw.com

Applicant Details

First Name **Miranda**
 Middle Initial **A**
 Last Name **Paez**
 Citizenship Status **U. S. Citizen**
 Email Address mirandapaez@berkeley.edu

Address
Address
Street
4735 Matterhorn Way
City
Antioch
State/Territory
California
Zip
94531
Country
United States

Contact Phone
 Number **(626)841-9567**

Applicant Education

BA/BS From **University of California-Berkeley**
 Date of BA/BS **May 2019**
 JD/LLB From **University of California, Berkeley School of Law**
<https://www.law.berkeley.edu/careers/>
 Date of JD/LLB **May 10, 2024**
 Class Rank **School does not rank**
 Law Review/
 Journal **Yes**
 Journal(s) **California Law Review, La Raza Law Journal,
 Berkeley Technology Law Journal**
 Moot Court
 Experience **Yes**
 Moot Court
 Name(s) **Saul Lefkowitz Trademark Moot Court
 Competition**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **Yes**
Externships
Post-graduate
Judicial Law Clerk **No**

Specialized Work Experience

Professional Organization

Organizations **Just The Beginning Organization**

Recommenders

Hurley, Patricia
pplunkett@berkeley.edu
DiGennaro, Diana
ddigennaro@berkeley.edu
510.642.1870
Chemerinsky, Erwin
echemerinsky@law.berkeley.edu
5106426483

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Miranda A. Paez

4735 Matterhorn Way, Antioch, CA 94531 | mirandapaez@berkeley.edu | (626) 841-9567

June 12, 2023

The Honorable Jamar K. Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a rising third-year law student at the University of California, Berkeley School of Law, applying for a judicial law clerk position in your chambers for 2024-2025 or any future term. Your commitment to public service as an Assistant United States Attorney and dedication to uplifting your community set an example I aspire to follow. Further, I am applying to your chambers, in particular, because of your commitment to supporting underrepresented law students and lawyers. I am the proud daughter of a single mother, granddaughter of Mexican immigrants, first-generation college graduate, and law student interested in pursuing a career in government. I am confident my personal background, professional experience, legal writing skills, and passion will make me a great asset to your chambers.

My judicial externship with Judge Corley in the Northern District of California solidified my interest in clerking because I saw firsthand the public service judicial law clerks can provide. As an extern, I led judicial orders from bench memoranda to filing and orally presented the pertinent legal issues to the Judge prior to hearings. Additionally, in law school, I have continuously pursued opportunities to improve my legal research and writing skills. As a *California Law Review* editor, Research Assistant to Dean Erwin Chemerinsky, and Moot Court competitor, I have researched novel areas of law, edited legal scholarship, and written an award-winning legal brief. Serving as a law clerk in your chambers is an opportunity to contribute my perspective to judicial processes, develop my legal writing skills, and observe effective lawyering to become a more refined legal advocate.

Further, because of my passion for educational equity and dedication to serving my community, during law school, I have continued to lead programming for the organization I founded, called El Monte Scholars. El Monte Scholars provides high school and community college students in my majority-minority hometown with resources, such as mentorship and webinars on college applications and financial aid. I created El Monte Scholars to fill a resource gap in my hometown and, ultimately, to increase the percentage of low-income, minority students obtaining a higher education.

My professional and personal experiences have left me both well-prepared and eager to clerk. I find the problem-solving nature of legal research and writing both intellectually challenging and empowering. And as someone who grew up in a mixed-immigrant status family and a heavily policed neighborhood, I bring an important perspective. My passion for the law is rooted in my reality.

I would enthusiastically welcome the opportunity to support the work of your chambers. My resume, law school transcript, three references, and a writing sample from my judicial externship are attached. Three letters of recommendation will be arriving separately. If you have any questions, please do not hesitate to contact me. Thank you for your time and consideration.

Respectfully,

Miranda A. Paez

Miranda A. Paez

4735 Matterhorn Way, Antioch, CA 94531 | mirandapaez@berkeley.edu | (626) 841-9567

EDUCATION

University of California, Berkeley School of Law, Berkeley, CA

J.D. Candidate, May 2024

Honors: Berkeley Law Opportunity Scholar (full-tuition scholarship); Saul Lefkowitz Trademark Moot Court Competition – Third Place Overall in Region; Hispanic National Bar Association Intellectual Property Law Scholar; Sidley Austin Diversity Scholar; Hispanic Scholarship Fund Scholar

Activities: *California Law Review*, Associate Editor; Board of Advocates, Moot Court Team; Coalition of Minorities in Technology Law, President; *La Raza Law Journal*, Submissions Editor; Halloum 1L Negotiations Competition, Competitor; First Generation Professionals; La Alianza; Women of Color Collective

University of California, Berkeley, Berkeley, CA

B.A., Political Science, with Honors, May 2019

Honors: Political Science Department Honors Program; Charles H. Percy Undergraduate Grant for Public Affairs Research; Congressional Hispanic Caucus Institute Public Policy Fellow; California Capital Fellow; Educational Opportunity Program Achievement Award; Latinx Alumni Association Scholar

Research: Senior Honors Thesis: *Oakland Ceasefire: Evaluating Ceasefire's Impact on Youth Violence*; Undergraduate Research Assistant to Professor Rodney Hero

Activities: Student Government Senate Office, Chief of Staff; Lambda Theta Alpha, President

Pasadena City College, Pasadena, CA

A.A., Social and Behavioral Sciences, Humanities with Honors, May 2016

Honors: Honors Transfer Program; Alpha Gamma Sigma Honor Society; Phi Alpha Delta

EXPERIENCE

United States District Court for the Northern District of California, San Francisco, CA

October 2025-October 2026

Judicial Law Clerk to the Honorable Sallie Kim

Sidley Austin LLP, San Francisco, CA

May 2023-July 2023

Litigation Summer Associate

Berkeley Law Dean and Distinguished Professor of Law Erwin Chemerinsky, Remote

January 2023-May 2023

Research Assistant

Researched Article V procedures. Line-edited, cite-checked, and blue-booked a chapter of a forthcoming book on constitutional law.

United States District Court for the Northern District of California, San Francisco, CA

January 2023-May 2023

Judicial Extern to the Honorable Jacqueline Scott Corley

Researched and drafted bench memoranda and judicial orders, including regarding a motion to dismiss and a motion for summary judgment. Observed civil and criminal hearings, trials, and settlement conferences.

Oracle, Redwood Shores, CA

May 2022-July 2022

Legal Intern

Synthesized research on non-cancellable agreements into a memorandum for a mediation and drafted a corresponding Executive Summary for Oracle executives. Researched and compiled global privacy legislation on data subject access rights.

El Monte Scholars, Remote

July 2021-May 2023

Founder

Created a virtual organization to provide college application and professional resources to first-generation, low-income, and minority high school and community college students in El Monte, California.

United States Court of Appeals for the Ninth Circuit, San Francisco, CA

August 2020-July 2021

Docket Clerk

Analyzed and summarized motions, petitions, and briefs for review by managing docket clerks. Organized new appeals and petitions, reviewed lower court and agency dockets and records, and determined case schedules. Filed and served orders on parties, communicated case information to parties, and answered pro se inquiries about hearings and case status.

Medina Orthwein LLP, Oakland, CA

February 2020-March 2020

Legal Assistant

Drafted pleadings, discovery requests, and demand letters in employment discrimination matters. Managed client intake and correspondence. Published social media posts on employment law issues and LGBTQ+ prisoner rights.


SKILLS AND INTERESTS

Spanish (Intermediate), Puppy Training, Thriller Films, Strength Training, Los Angeles Dodgers.

CALCENTRAL

Academic Summary

Student Profile

Name	Miranda Allison Paez		
Student ID	3032383004		
Major	Law Professional Programs Law JD		
Academic Career	Law		
Level	Professional Year 2		
Expected Graduation	Law JD Spring 2024		
Cumulative Units	Total Units	56	
	Law Units	56	
Degree Conferred	 Bachelor of Arts in Political Science Awarded: May 17, 2019 College of Letters and Science Honors in Political Science		

Enrollment

Fall 2021

Class	Title	Un.	Law Un.	Gr.
LAW 200F	Civil Procedure	5	5	P
LAW 201	Torts	4	4	P
LAW 202.1A	Legal Research and Writing	3	3	CR
LAW 230	Criminal Law	4	4	P
Earned Total:		16	16	

Spring 2022

Class	Title	Un.	Law Un.	Gr.
LAW 202.1B	Written and Oral Advocacy Units Count Toward Experiential Requirement	2	2	H
LAW 202F	Contracts	4	4	P
LAW 220.6	Constitutional Law Fulfills Constitutional Law Requirement	4	4	P
LAW 275.3	Intellectual Property Law	4	4	P
Earned Total:		14	14	

Fall 2022

Class	Title	Un.	Law Un.	Gr.
LAW 207.5	J.D. Advanced Legal Writing Fulfills 1 of 2 Writing Requirements	3	3	H
LAW 210	Legal Profession Fulfills Professional Responsibility Requirement	2	2	H
LAW 235.32	Youth Justice Law, Practice and Policy	2	2	H
LAW 244.91A	Appellate Competition Intensive Part 1 Units Count Toward Experiential Requirement	1	1	CR
LAW 250	Business Associations	4	4	P
Earned Total:		12	12	

Spring 2023

Class	Title	Un.	Law Un.	Gr.
LAW 289A	Judicial Externship Seminar Units Count Toward Experiential Requirement	1	1	CR
LAW 295.3P	Lefkowitz Moot Court Competition	1	1	CR
LAW 295.8B	Judicial Externships: Bay Area Units Count Toward Experiential Requirement	11	11	CR
LAW 297	Self-Tutorial Seminar	1	1	CR
Earned Total:		14	14	

Fall 2023

Class	Title	Un.	Law Un.	Gr.
LAW 216	Law, Accounting, and Business Workshop	2	2	—
LAW 231	Criminal Procedure - Investigations Units Count Toward Race and Law Requirement	4	4	—
LAW 241	Evidence	4	4	—
Enrolled Total:		16	16	

Class	Title	Un.	Law Un.	Gr.
LAW 245	Negotiations	3	3	—
	Units Count Toward Experiential Requirement			
LAW 265.41	Religion & Equality in a Diverse World	2	2	—
	Fulfills 1 of 2 Writing Requirements			
LAW 272.33	Environmental Health Law Through Film	1	1	—
	Units Count Toward Race and Law Requirement			
Enrolled Total:		16	16	

Summary		Un.	Law Un.
Earned Total:		56.0	56.0



© 2023 UC Regents

Home > Careers > For Employers > Grading Policy

Grading Policy

Understanding the Berkeley Law Grading System

A number of lawyers who regularly interview at Berkeley Law have told us that they sometimes have difficulty evaluating the academic records of our students or comparing them with those of students at other schools. This webpage attempts to address those concerns.

Students can receive one of five grades in courses at Berkeley Law: High Honors (HH), Honors (H), Pass (P), Pass Conditional/Substandard Pass (PC), or No Credit (NC). In first-year JD classes, the curve for honors grades is strict—the top 40 percent of the class receives honors grades, with 10 percent of the class receiving High Honors and the next 30 percent receiving Honors. There is no required curve for the grades of Pass and below, and faculty members are not required to give any Substandard Pass or No Credit grades. In second- and third-year classes, up to 45 percent of the class can receive honors grades, of which up to 15 percent of the class can receive High Honors. In small seminar classes, the curve still exists, but it is further relaxed. A very few courses are graded on a Credit (CR)/No Pass (NP) basis.

NOTE: 2020-2021 GRADING POLICY IN LIGHT OF COVID-19 PANDEMIC
For the Fall 2020 and Spring 2021 semester, all substandard pass grades will appear as pass grades on Berkeley Law transcripts.

Berkeley Law students are not ranked by their academic records. Nor do we calculate grade point averages (GPAs). Moreover, the grade ranges described above often do not make fine distinctions. A student who received a Pass grade, for example, may have done very strong or only minimally passing work. How then can employers make sense of Berkeley Law transcripts?

Here are some suggestions:

Students are graded on a curve, which strictly limits recognition for excellence. At Berkeley Law, the grading system has remained constant for more than 25 years. There has been no grade inflation, even though the credentials of our students—whether measured by undergraduate GPA, LSAT score, or prior life attainments—are far stronger than they were 25 years ago.

With a fixed curve and a talented student body, an Honors grade represents a substantial achievement and a High Honors grade an outstanding one. For internal purposes, the Berkeley campus translates both Honors and High Honors grades into its system as A's. (However, if you receive a transcript which lists letter grades from a Berkeley Law student, please return it to the student and require that he or she provide a transcript from the law school Registrar's Office, not from the main campus.)

A student with mostly Honors grades is doing excellent work in very competitive company. And a transcript with a rough mixture of Honors and Pass grades represents strong performance that would likely stand above the class median at schools of comparable quality.

Second, keep in mind that Berkeley Law's student body is exceptionally strong. For example, the class that entered Berkeley Law in the fall of 2016 (i.e., the Class of 2019) had a median college GPA of 3.79, and a median LSAT score of 166 (in the 93rd percentile).

Third, in evaluating student records with more Pass grades, it is important to remember that a significant number of students receive such grades even though they have written examinations that placed them above or near the class median. At schools with more conventional grading systems, median performances often earn a grade of B+. Thus even a record with no or few High

Honors or Honors grades may conceal considerable academic distinction. For example, each year a few Berkeley Law students whose exam performance places them at or above the class median in their first-year courses fail to achieve a single Honors grade. Sometimes such students can provide letters from their instructors documenting their strong performance. In other cases, one must speak to academic references, review writing samples, weigh journal commitments, or evaluate the quality of the undergraduate record in order to form a fair estimate of the student's achievement and potential.

Finally, we at Berkeley Law want to ensure that you receive the information you need to make reasoned choices both between law students and graduates from other schools and among Berkeley Law students and graduates. You should feel free to call faculty references given by students. If you have additional questions, contact our Assistant Dean for Career Development, Terrence Galligan, at 510-642-7746.

A Note about LLM and JSD Student Grades

A separate mandatory curve applies to all LLM and JSD students in classes and seminars with 11 or more LLM and JSD students such that 20% of the LLM and JSD students receive HHs, 30% receive Hs, and 50% receive Ps. The same curve is recommended for LLM and JSD students in classes and seminars with 10 or fewer LLM and JSD students.

Miranda A. Paez

4735 Matterhorn Way, Antioch, CA 94531 | (626) 841-9567 | mirandapaez@berkeley.edu

REFERENCES:

Caroline Jacobs
Career Law Clerk to the Honorable Jacqueline Scott Corley
U.S. District Court for the Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102
Caroline_Jacobs@cand.uscourts.gov
(415) 522-2172

EunHae Park
Senior Managing Counsel
Oracle Corporation
500 Oracle Parkway
Redwood Shores, CA 94065
eunhae.park@oracle.com
(415) 307-3512

Caroline Wong
Senior Managing Associate
Sidley Austin LLP
One South Dearborn
Chicago, Illinois 60603
caroline.wong@sidley.com
(312) 853-7146

June 1, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I wholeheartedly recommend Miranda Paez for a judicial clerkship. Miranda's goal in pursuing a clerkship is related to the same goal that drives her focused approach to law school: to hone her impressive lawyering skills, and to inspire and encourage other students from similar backgrounds to do the same.

Miranda is a bright and determined student who uses resources wisely in order to achieve her educational and professional goals. Miranda grew up in a neighborhood and a family that was impacted by the "school-to-prison pipeline" and as an undergraduate at U.C. Berkeley, she authored an award-winning research paper on a local youth violence prevention program while also working on Latino student recruitment and retention.

Even during the first few weeks at Berkeley Law, when many of the 1Ls were still settling in, Miranda drafted well-reasoned objective memos for my Legal Research and Writing class. Her written work highlighted her strong analytical and writing skills. Miranda also came to many of my office hours with a list of good questions, and she spent significant effort revising her memos based upon my feedback, which elevated her final drafts to a higher level than many of her peers.

During the spring semester, the focus of my first-year skills class shifted from objective to persuasive legal writing, and Miranda showed great facility in making this transition. In my Written and Oral Advocacy (WOA) class, Miranda excelled in all her written work as well as oral advocacy, for which she earned an Honors grade.

Miranda was assigned to represent a workers' rights group pursuing a FOIA request which a government agency had denied based on a privacy exemption. Miranda was engaged in the topic early on, finding relevant cases and weighing arguments well before the first draft was due. Miranda's first draft contained arguments that were more well-developed than her classmates. In her final brief, Miranda persuasively argued that the agency could not withhold a video record under Exemption 6 because the public interest in obtaining information about a fatal construction accident outweighed the privacy interests of the surviving family members. In her strong public interest section, she marshalled the facts and cases to show that the video was the best record of the work site prior to the accident, and that substantial taxpayer expenditure on the project further weighed toward disclosure.

At her oral argument, Miranda demonstrated a depth of knowledge about the legal issues and our record, and a great ability to respond to questions from the judges. Miranda confidently emphasized the ways in which the release of the video would advance the public interest by providing valuable information about the agency's operation.

In addition to her impressive research and writing skills, Miranda holds several leadership roles on journals and other law school groups that reflect her interests. She is an editor for both the California Law Review and the La Raza Law Journal, and she also serves as President of the Coalition of Minorities in Technology Law. Her experience externing with Judge Corley (N.D. Cal.) this semester has further piqued her interest in clerking after graduation.

Miranda's intelligence and diligence will make her a valuable and resourceful clerk. Moreover, as a former staff attorney at the Ninth Circuit, I am sure that Miranda's background as a docketing clerk at that court will be extraordinarily helpful in chambers.

Please contact me if I can be of any further assistance regarding Miranda Paez's clerkship application.

Sincerely,

Patricia Plunkett Hurley
Professor of Legal Writing
Legal Research, Analysis, and Writing Program
University of California, Berkeley School of Law

Patricia Hurley - pplunkett@berkeley.edu

May 1, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Candidate Miranda Paez

Dear Judge Walker:

I write in support of Miranda Paez's clerkship application. I worked closely with Miranda in my Advanced Legal Writing course, where she was one of only 16 students. I have known and enjoyed working with her since her first semester of law school, when she participated in our Pre-Orientation Program. Miranda's exceptional writing and attention to detail sets her apart from other students. She readily grasps complex material and can translate that material into clear and concise written analysis. Based on my own experience as a judicial clerk, I believe that Miranda would be a valuable addition to your Chambers.

In Advanced Legal Writing, students are expected to write multiple drafts of a persuasive brief under tight time constraints. Miranda rose to the challenge. In class and in her writing, she dug into the complexities of the cases and used the facts effectively and creatively. She contributed nuanced comments and asked thoughtful questions. Her work product consistently reflected clear thinking, rigorous analysis, and careful editing; she works hard and cares deeply about getting it right. This semester she continued to hone her legal research and writing skills through a judicial externship that required independent, careful work.

Miranda's extracurricular activities also make her an ideal candidate. As an Associate Editor for the *California Law Review* and Submissions Editor for the *La Raza Law Journal*, she has demonstrated intellectual curiosity, attention to detail, and teamwork. Miranda also competed and ultimately placed third in the Regional Round of the Saul Lefkowitz Trademark Moot Court Competition. In a span of two months, she worked with her teammates to write an appellate brief and craft a persuasive oral argument. And as President of the Coalition of Minorities in Technology Law, Miranda steers the organization's programming and further its mission of fostering community among underrepresented students interested in technology law. Miranda has successfully juggled these valuable experiences with community engagement and a heavy course load.

Miranda's achievements are amplified by the fact that nothing has been handed to her and no one has given her a leg up. As a first-generation college student and the granddaughter of immigrants, Miranda came to law school without the background knowledge and network that helps many students get their footing. She quickly closed the gap and has excelled academically, demonstrating remarkable maturity and leadership.

I have spent many hours reading Miranda's writing, meeting with her individually, and working with her in class. She is a true self-starter, a sharp legal thinker, and a pleasure to work with. Her writing is top notch, her work ethic impeccable. There is no doubt in my mind that she will be an excellent clerk, as well as a kind and personable addition to Chambers.

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

Diana DiGennaro

Diana DiGennaro - ddigennaro@berkeley.edu - 510.642.1870

May 20, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to highly recommend Ms. Miranda Paez for a position as your law clerk. Ms. Paez was a student in my Constitutional Law class. Additionally, she was my research assistant during the Spring 2023 semester. She did an excellent job as my research assistant. I was very impressed by her research, writing, and editing skills. I also found her a pleasure to work with. Based on this experience, I think she would be an excellent law clerk.

As my research assistant, she worked on my forthcoming book about the flaws in the Constitution that threaten democracy and how they can be addressed. She did a research memo on possible ways of amending the Constitution without using the Article V process. This is an assignment that required creativity and sophisticated research skills. She did a great job. She also edited a chapter of the book, and her editing was excellent and her work on the footnotes was thorough and carefully done. Each assignment was completed on time and exceptionally well done.

Based on this work, and observing her in my class, I think that she has the skills and abilities to be an excellent law clerk. She is very smart, works exceptionally hard and effectively, and is always kind and considerate to those around her.

She has been outstanding throughout law school, serving on the California Law Review and as an editor La Raza Law Review, excelling in moot court, serving as President of the Coalition of Minorities in Technology Law, and much else.

I enthusiastically recommend her to you.

Sincerely,

Erwin Chemerinsky

Erwin Chemerinsky - echemerinsky@law.berkeley.edu - 5106426483

I, Miranda Paez, drafted the following bench memorandum during my judicial externship at the United States District Court for the Northern District of California. The research and writing are substantially my own, including revisions based on feedback provided by Chambers staff. I have received permission to use it as a writing sample. For confidentiality purposes, I have changed party names and relevant dates.

Plaintiff seeks Social Security benefits for a combination of physical and mental impairments, including spondylosis, depression, anxiety, degenerative disc disease (DDD), and attention-deficit hyperactivity disorder (ADHD). Pursuant to 42 U.S.C. § 405(g), Plaintiff filed this lawsuit for judicial review of the final decision by the Commissioner of Social Security (“Commissioner”) denying her benefits claim. Before the Court are the parties’ cross-motions for summary judgment. (Dkt. Nos. 13-1, 14.)¹ After careful consideration of the parties’ briefing, I recommend the Court GRANT Plaintiff’s motion, DENY Defendant’s cross-motion, and remand for further proceedings. Because the ALJ erred in his weighing of medical evidence and Plaintiff’s subjective symptom testimony, but there are outstanding issues to be resolved, remand for further proceedings is proper.

BACKGROUND

I. Procedural History

Plaintiff applied for disability and disability insurance benefits under Title II of the Social Security Act on September 27, 2019. (Administrative Record (“AR”) 179-80.) Plaintiff alleged an amended disability onset date of November 25, 2017 due to DDD, spondylosis, depression, anxiety, and ADHD. (Dkt. No. 13-1 at 10; AR 15.) Her application was initially denied on February 17, 2020 and upon reconsideration on May 19, 2020. (AR 91-94, 99-103.) An Administrative Law Judge (“ALJ”) held a hearing on March 26, 2021. (AR 32-70.) On May 10, 2021 the ALJ issued a decision denying Plaintiff’s application for disability and disability benefits. (AR 12-31.)

A claimant is considered “disabled” under the Act if she meets two requirements. *See* 42

¹ Record Citations are to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of the document.